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To his Honoured Friend

Mr. *GEORGE WHITE*,

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Concerning the

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IS

Offered, Dedicated, Preſented,

BY

His humbleſt

and moſt obliged Servant,

A 3 *The Tranſlator.*

TO THE READER.

THE *Tranſlator having obſerved, in moſt of the Diſputes wherewith the preſent Age is diſquieted, frequent Appeals made, and that very properly, from* Laws and Ordinances of a meaner Rank *to the everlaſting* Law of Nature, *gave himſelf the Pains to turn over ſeveral Writers on that Subject. He chanced, he thinks with great Reaſon, to entertain an Opinion, that this Author was the cleareſt, the fulleſt, and the moſt unprejudiced of any he met with: And hereupon, that he might the better poſſeſs himſelf of his Reaſonings, he attempted to render the Work into*

Mother-Tongue, after he had firſt endeavoured to ſet ſeveral better Hands upon the Undertaking, who all for one Reaſon or other declined the Toil. He thought when 'twas done, it might be as acceptable to one or other to read it, as it had been to himſelf to tranſlate it.

Concerning the Author, *'tis enough to ſay, that he has ſurely had as great Regard paid him from Perſonages of the higheſt degree, as perhaps ever was given to the moſt learned of Men; having been invited from his Native Country, firſt by the* Elector Palatine, *to be Profeſſor of the* Law of Nature and Nations *in the Univerſity of* Heidelberg; *then by the King of* Sweden *to honour his new rais'd Academy, by accepting the ſame Charge therein, and afterwards being admitted of the* Council, *and made Hiſtoriographer, both to the ſame King, and to his Electoral Highneſs of* Brandenburgh, *afterwards King of* Pruſſia.

Concerning this his Work, it is indeed only as it were an Epitome of the Author's large Volume of The Law of Nature and Nations: *But as this Epitome was made and publiſhed by himſelf, the Reader cannot be under any doubt, but that he has here the Quinteſſence of what*

what is there deliver'd; what is par'd off being mostly Cases in the Civil Law, *Refutations of other Authors, and some Notions too fine and unnecessary for a Manual. How good an Opinion the learned World has of this his Performance, is very evident from the many Editions there have been of it, not only in the Original* Latin, *but in the Modern Languages, publish'd in* Sweden, Holland, France, Germany, *and* England.

Since the first Publication hereof in 1673, *at* Lunden, *the Author revis'd his larger Work, and put out a new Edition of it, with many Additions and great Improvements; and from thence this Work also has been amended and enlarged, by extracting these additional Chapters, and inserting them as compendiously as might be into their proper Places; which was first done in a* German *Translation, and afterwards in a* Latin *Edition, published by the Professor of* Giessen, *both in the Life-time of the Author, with his Knowledge, and by his Approbation; so that the Reader may be satisfied that these Additions, now first inserted into this Translation, are as genuine as the Rest of the Work; as he will find them as useful and necessary a Part, as any of the whole Book. Besides these, in this*

this Impreſſion, ſome other Additions and Alterations have been found neceſſary to be made: For whereas in ſome Places the Author's Opinion was delivered in ſo brief or obſcure a Manner, that his Meaning ſeemed difficult to be apprehended; again in other Places the Coherence and Connection of his Diſcourſes did not ſufficiently appear; to remedy the former of theſe Defects, all intricate Phraſes and Expreſſions have been changed, and where even that was not ſufficient to make the Author's Mind plain and clear, it is explained and illuſtrated by adding proper Inſtances and Examples; and then to repair the latter Defect, the Order of ſome of the Sections hath been changed, and proper and neceſſary Tranſitions to many of them have been added; the taking which Liberty, 'tis to be hoped, will ever appear moſt juſtifiable, ſince thereby the Rules of Method are better obſerv'd, and the Senſe of the Author rendered more perſpicuous than in the former Editions of this Tranſlation.

But farther, to make this Edition ſtill more compleat and uſeful than the former, to each Section References are continually made to the large Work of The Law of Nature and Nations, *and, as often as could be, to* The Rights of

of War and Peace; *that thoſe who read this Epitome, and have a mind to ſee any Point therein more fully handled and illuſtrated, may be readily directed, where to have recourſe to the Place where it is at large diſcourſed of, not only by this Author himſelf, but alſo by* Grotius, *an Author of equal Reputation for his judicious and learned Writings on Subjects of the ſame nature. Beſides theſe References, as ſome of the Author's Opinions, laid down in this Treatiſe, have been controverted by ſome Writers, and defended by the Author in ſome other of his Works, the Reader is directed to thoſe Places in them where theſe Cavils and Exceptions are taken notice of, and ſatisfactorily anſwered. But then, when any Exceptions can juſtly be made, and there is good Reaſon for differing from the Author's Opinion in any Point, the Reaſons are given for ſo doing in ſome Notes at the Bottom of the Page; which Notes, however, are neither many nor long, ſince it would be very abſurd to run into Prolixity in Comments to a Work where Brevity is principally aim'd at; into which therefore nothing ought to be admitted, but what is eſſentially and abſolutely neceſſary to the Subject treated of. And on this Account alſo it is, that whereas the ſame Matters have, in the former Editions, been found*

to

to occur in more than one Place, in this Edition ſuch ſuperfluous Repetitions have been par'd off, by putting together what has been ſaid on the ſame Point in different Places, and comprehending the whole under one Head or Section. And laſtly, that nothing might be wanting to render this in all Points perfect, a Compleat Index *is added.*

CON-

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THE

THE AUTHOR's PREFACE.

HAD not the *Cuſtom* which has ſo generally obtain'd among Learned Men, almoſt procured to it ſelf the Force of a *Law*, it might ſeem altogether ſuperfluous to premiſe a Word concerning the Reaſon of the * preſent Undertaking; the Thing it ſelf plainly declaring my whole

The Author's Deſign.

* *Ann.* 1673. *publiſhed in* Swediſh *a Year after his large Work.*

Deſign to be, the giving as *ſhort*, and yet, if I miſtake not, as *plain* and *perſpicuous* a *Compendium* of the moſt material Articles of the *Law of Nature*, as was poſſible; and this, leſt, if ſuch as betake themſelves to this Study ſhould enter thoſe vaſt Fields of Knowledge without having fully imbibed the Rudiments thereof, they ſhould at firſt ſight be terrified and confounded by the Copiouſneſs and Difficulty of the Matters occurring therein. And, at the ſame time, it ſeems plainly a very expedient Work for the Publick, that the Minds, of Youth eſpecially, ſhould be early imbu'd with that *Moral Learning*, for which they will have ſuch manifeſt Occaſion, and ſo frequent Uſe, through the whole Courſe of their Lives.

And altho' I have always looked upon it as a Work deſerving no great

great Honour, * to *Epitomize* the larger Writings of others, and more eſpecially one's own; yet having thus done out of Submiſſion to the commanding Authority of my Superiors, I hope no honeſt Man will blame me for having endeavoured hereby to improve the Underſtandings of *Young* Men more particularly; to whom ſo great Regard is to be had, that whatſoever Work is undertaken for their ſakes, tho' it may not be capable of great Acuteneſs or ſplendid Eloquence, yet it is not to be accounted unworthy of any Man's Pains. Beſide, that no Man, in his Wits, will deny, that theſe Principles thus laid down are more conducive to the underſtanding of *all Laws* in general, than any Elements of the *Law Civil* can be.

* See *Julius Rondinus præf. ad Erid. Scand. in Poſtſcripto & Comment. ad Pullum. Ven. Lipſ. p.* 46, 47.

And this might have ſufficed for the preſent; but I am minded by ſome, that it would not be improper to lay down ſome few Particulars, which will conduce much to a right Underſtanding of the Conſtitution of the *Law of Nature*, and for the better aſcertaining its juſt Bounds and Limits. And this I have been the more ready to do, that I might on this occaſion obviate the Pretences of ſome over-nice Gentlemen, who are apt to paſs their ſqueamiſh Cenſures on this Sort of Learning, which in many Inſtances, is wholly ſeparate from their Province.

Three Sciences by which Men come to a knowledge of their Duty.

Now 'tis very manifeſt, that Men derive the Knowledge of their Duty, and what is fit to be done, or to be avoided in this Life, as it were, from *three Springs*, or Fountain-

tain-Heads; to wit, From the *Light of Nature*; From the *Laws and Conſtitutions of Countries*; And from the *Special Revelation of Almighty God.*

From the Firſt of theſe proceed all thoſe moſt common and ordinary Duties of a Man; more particularly thoſe that conſtitute him a *ſociable Creature* with the Reſt of Mankind: From the Second are derived all the Duties of a Man, as he is a *Member* of any particular *City* or *Common-wealth*: From the Third reſult all the Duties of a *Chriſtian* Man.

And from hence proceed *three* diſtinct *Sciences*: The *firſt* of which is of the *Law of Nature*, common to all Nations; the *ſecond* is of the *Civil* or *Municipal Law* peculiar to each Country, which is or may be as manifold and various as there

are different States and Governments in the World; the *third* is *Moral Divinity*, as it is contra-diſtinct to that Part of Divinity, which is converſant in explaining the Articles of our Faith.

The difference between the Law of Nature, Civil Law *and* Moral Theology.

Each of theſe Sciences hath a peculiar Way of proving their Maxims, according to their own Principles. The *Law of Nature* aſſerts, that this or that Thing ought to be done, becauſe from *right Reaſon* it is concluded, that the ſame is neceſſary for the Preſervation of Society amongſt Men.

The fundamental Obligation we lie under to the *Civil Law* is, that the *Legiſlative Power* has enacted this or that Thing.

The Obligation of *Moral Divinity* lies wholly in this; becauſe God,

God, in the Sacred *Scripture*, has ſo commanded.

Now, as the *Civil Law* preſuppoſes the *Law of Nature*, as the more general Science; ſo if there be any thing contained in the *Civil Law*, wherein the *Law of Nature* is altogether *ſilent*, we muſt not therefore conclude, that the one is any ways *repugnant* to the other. In like manner, if in *Moral Divinity* ſome Things are delivered, as from Divine Revelation, which by our Reaſon we are not able to comprehend, and which on that Score are above the Reach of the *Law of Nature*; it would be very abſurd from hence to ſet the one againſt the other, or to imagine that there is any real *Inconſiſtency* between theſe Sciences. On the other hand, in the Doctrine of the *Law of Nature*, if any things are to be preſuppoſed, becauſe ſo much

The Maxims of theſe three Sciences in no wiſe oppoſite or contradictory to each other.

much may be inferred from *Reaſon*, they are not to be put in Oppoſition to thoſe Things which the *Holy Scripture* on that Subject delivers with greater Clearneſs; but they are only to be taken in an abſtracted Senſe. Thus, for Example, from the *Law of Nature*, abſtracted from the Account we receive thereof in Holy Writ, there may be formed an *Idea* of the Condition and State of the *firſt Man*, as he came into the World, only ſo far as is within the Comprehenſion of *Human Reaſon*. Now, * to ſet thoſe Things inoppoſition to what is delivered in Sacred Writ concerning the ſame State,

* See *L. N. N. l.* II. *c.* 1. § 8. *c.* 11. § 2. *Diſſert. Acad.* X. de ſtatu Nat. § 3. *Eriſ. Scand. præf. Rondini Apol. adverſ. Indicem Novitat.* § 11, 12, 16. *p.* 20. *ſeq. Specim. Controv. c.* 3. § 1, 3. & *p.* 20. *c.* 4. § 16. *p.* 217, 258. *ſequ. Spicileg. Controv. c.* 2. § 1. 13, 15. *c.* 3. § 1. *p.* 357, 380. *ſequ. Rondin. Diſſert. Epiſt.* § 1. *p.* 396. & *Poſtſcript. ad Seckendorff. Puffendorf. Epiſt. ad Amic. Erid. p.* 133. *Comment. ſuper Pullo Lipſ. Ven.* 11, 16, 36, 44, 46, 52, 54

would

would be the greateſt Folly and Madneſs in the World.

But as it is an eaſie Matter to reconcile the *Civil Law* with the *Law of Nature*; ſo it ſeems a little more difficult to ſet certain Bounds between the ſame *Law of Nature* and *Moral Divinity*, and to define in what Particulars chiefly they differ one from the other.

Upon this Subject I ſhall deliver my Opinion briefly, not with any Papal Authority, as if I was exempt from all Error by any peculiar Right or Priviledge, neither as one who pretends to any Enthuſiaſtick Revelation; but only as being deſirous to diſcharge that Province which I have undertaken, according to the beſt of my Ability. And, as I am willing to hear all Candid and Ingenuous Perſons, who can

inform

inform me better; and am very ready to retract what I have ſaid amiſs; ſo I do not value thoſe Pragmatical and Poſitive Cenſurers and Buſie-bodies, who boldly concern themſelves with Things which no ways belong to them: Of theſe Perſons we have a very Ingenious Character given by *Phædrus*: * *They run about*, ſays he, *as mightily concerned; they are very buſie even when they have nothing to do; they puff and blow without any occaſion; they are uncaſie to themſelves, and troubleſome to every body elſe.*

The difference between the Law of Nature and Moral Theology.

Now the Chief Diſtinction, whereby theſe Sciences are ſeparated from one another, proceeds

* *Eſt Ardelionum quædam Romæ Natio,*
Trepidè concurſans, occupata in otio,
Gratis anhelans, multa agendo nihil agens,
Sibi moleſta & aliis odioſiſſima.
Phæd. Lib. II. Fab. 5.

from

from the different Source or Spring whence each derives its *Principles*; and of which I have already diſcourſed. From whence it follows, if there be ſome things, which we are enjoined in Holy Writ either to do or forbear, the Neceſſity whereof cannot be diſcover'd by *Reaſon alone*, they are to be looked upon as out of the Cognizance of the *Law of Nature*, and properly to appertain to *Moral Divinity*.

1ſt. *They differ in the Source from whence each derives its Principles.*

Moreover, in *Divinity* the Law is conſidered as it has the Divine Promiſe annexed to it, and with Relation to the Covenant between God and Man; from which Conſideration the *Law of Nature* abſtracts, becauſe the other derives it ſelf from a particular *Revelation* of God Almighty, and which *Reaſon* alone could not have found out.

2d. *Difference in the Manner whereby the Laws of them both are propoſed.*

But

3d. *Difference in the End and Deſign of them both.*

But the greateſt Difference between them is this; that the main End and Deſign of the *Law of Nature* is included within the Compaſs of * this Life only, and ſo thereby a Man is informed how he is to live in Society with the Reſt of Mankind: But *Moral Divinity* inſtructs a Man how to live as a

* It is true that Revelation has, beyond all doubt, aſſerted and given full Evidence of the Immortality of the Soul, and of the Certainty of Rewards and Puniſhments in the World to come: It is alſo certain, that the fundamental and diſtinguiſhing Principle of Moral Theology, is the Hope of a bleſſed Eternity, promiſed to thoſe who direct their Lives by Goſpel Precepts. However, we muſt not therefore take from the *Law of Nature* all Regard to a future Life: For we may, by the meer Light of Reaſon, proceed ſo far at leaſt, as to diſcover, that it's not improbable, that God will puniſh in another World, thoſe who have wilfully violated the *Law of Nature*, and have thereupon ſuffered neither Human nor Divine Puniſhment in this Life; nay farther, that this Opinion is much more probable than the contrary one to it. If this be ſo, it is agreeable to the *Laws* of Prudence and good Senſe, that no Man, for the ſake of a ſhort and tranſient Satisfaction, ſhould expoſe himſelf even to a Poſſibility of being eternally miſerable: And thus far the Fear of being puniſhed in the Life to come; may very juſtly be ſaid to appertain to the Sanction of the *Law of Nature*. See *L. N. N. lib. 2. c. 3. § 21.*

Chriſtian;

Chriſtian; who is not only obliged to live honeſtly and virtuouſly in this World, but is beſides in earneſt Expectation of the Reward of his Piety after this Life; and therefore he has his Converſation in Heaven, but is here only as a Stranger and a Pilgrim. For although the Mind of Man does with very great Ardency purſue after Immortality, and is extremely averſe to its own Deſtruction; and thence it was, that moſt of the Heathens had a ſtrong Perſuaſion of the ſeparate State of the Soul from the Body, and that then Good Men ſhould be *rewarded*, and Evil Men *puniſhed*; yet notwithſtanding ſuch a ſtrong Aſſurance of the Certainty hereof, upon which the Mind of Man can firmly and entirely depend, is to be derived only from the *Word of God*. Hence it is that the Dictates of the *Law of Nature* are adapted only to *Human Judicature*,

Judicature, which does not extend it ſelf beyond this Life; and it would be abſurd in many reſpects to apply them to the Divine *Forum*, which concerns it ſelf only about Theology.

4th *Difference in reſpect to the Object of each of them.*

From whence that alſo follows, that, becauſe *Human Judicature* regards only * the external Actions of Man, but can no ways reach the Inward Thoughts of the Mind, which do not diſcover themſelves by any outward Signs or Effects; therefore the *Law of Nature* is for the moſt part exerciſed in forming the outward Actions of Men. But *Moral Divinity* does not content it ſelf in regulating only the *Exterior Actions*; but is more peculiarly intent in forming the *Mind*, and its

* *Eriſ. Scandic. Specim. Controverſ. c.* 4. § 19. *p.* 262. *Spicileg. c.* 1. § 20. *p.* 355, &c. *c.* 11. § 10. *p.* 371. *Epiſt. ad Amicos. p.* 133.

internal

internal Motions, agreeable to the good Pleaſure of the Divnie Being; diſallowing thoſe very Actions, which *outwardly* look well enough, but proceed from an impure and corrupted *Mind*. And this ſeems to be the Reaſon why the Sacred Scripture doth not ſo frequently treat of thoſe Actions, that are under certain Penalties by Human Laws, as it doth of thoſe, which, as *Seneca* expreſſes it, * are out of the Reach of any ſuch Conſtitutions. And this will manifeſtly appear to thoſe, who ſhall carefully conſider the Precepts and Virtues that are therein inculcated; altho', as even thoſe Chriſtian Virtues do very much diſpoſe the Minds of Men towards the maintaining of mutual Society; ſo like-

* *Quam anguſta innocentia eſt ad legem bonum eſſe? Quanto latiùs Officiorum patet quam Juris Regula? Quàm multa Pietas, Humanitas, Liberalitas, Juſtitia, Fides exigunt, quæ omnia extra Publicas Tabulas ſunt?* Seneca de Ira, lib. 2. cap. 27.

wiſe

wiſe *Moral Divinity* does mightily promote the Practice of all the main Duties that are enjoyn'd us in our Civil Deportment: So that, * if you ſhould obſerve any one behave himſelf like a reſtleſs and troubleſome Member in the Common-wealth, you may fairly conclude, that the Chriſtian Religion has made but a very ſlight Impreſſion on that Perſon, and that it has taken no Root in his Heart.

And from theſe Particulars, I ſuppoſe, may be eaſily diſcovered; not only the certain Bounds and Limits which diſtinguiſh the *Law of Nature*, as we have defined it, from *Moral Divinity*; but it may likewiſe be concluded, that the *Law of Nature* is no way repugnant to the Maxims of *ſound Divinity*; but is on-

* *Diſſert. Acad.* IV. *de Syſtemat Civit.* § 7. & IX. *de Concord. veræ polit. cum Relig. Chriſt.*

ly

ly to be abſtracted from ſome particular Doctrines thereof, which cannot be fathom'd by the Help of Reaſon alone. From whence alſo it neceſſarily follows, that in the Science of the *Law of Nature*, a Man ſhould be now conſider'd, as being deprav'd in his very Nature, and upon that Account, as a Creature, ſubject to many vile Inclinations: * For although none can be ſo ſtupid as not to diſcover in himſelf many Evil and inordinate Affections, nevertheleſs, unleſs we were inform'd ſo much by Sacred Writ, it would not appear, that this Rebellion of the Will was occaſioned by the firſt Man's Tranſgreſſion; and conſequently, ſince the *Law of Nature* does not reach thoſe Things which are above Reaſon, it would be very prepoſterous to derive it from

In regard to the Law of Nature we are to conſider Man, in the depraved State he has been, ſince the firſt Tranſgreſſion.

* *Specim. Controv. c.* 1. § 2.

the State of Man, as it was uncorrupt before the Fall; * eſpecially ſince even the greateſt Part of the Precepts of the *Decalogue*, as they are deliver'd in Negative Terms, do manifeſtly preſuppoſe the *depravd State* of Man. Thus, for Example, in the Firſt and Second Commandment, it ſeems to be ſuppoſed, that Mankind was naturally prone to the Belief of *Polytheiſm* and to *Idolatry*. For if you ſhould conſider Man in his Primitive State, wherein he had a clear and diſtinct Knowledge of the Deity, as it were by a peculiar Revelation; I do not ſee how it could ever enter into the Thoughts of ſuch a one, to frame any Thing to himſelf to which he could pay Reverence, inſtead of, or together with, the true GOD; or to believe any Divinity to reſide in that which

* *Præfat. p.* 1. *ad Jur. Nat. & Gent. Poſtſcript. Rondini ad Seckendorf. Apol.* § 28. *Specim. Controv. c.* 4. § 12, 17. *Spicileg. c.* 11. § 1, 5, 6, 8, 14. *Comment. ad Ven. Lipſ. p.* 37.

his

his own Hands had form'd; therefore there was no Neceſſity of laying an Injunction upon him in Negative Terms, that he ſhould not worſhip other Gods; but this Plain Affirmative Precept would have been ſufficient; *Thou ſhalt love, honour, and adore GOD, whom you know to have created both your ſelf, and the whole Univerſe.* And the ſame may be ſaid of the Third Commandment: For why ſhould it be forbidden, in a Negative Precept, to blaſpheme God, to ſuch a one who had at the ſame time a clear and perfect Underſtanding of his Bounty and Majeſty; and who was actuated by no inordinate Affections, and whoſe Mind did chearfully acquieſce in that Condition, wherein he was placed by Almighty God? How could ſuch a one be Guilty of ſo great Madneſs? But he needed only to have been admoniſh'd by this

Affirmative Precept; *That he ſhould glorifie the Name of* GOD. But it ſeems otherwiſe of the Fourth and Fifth Commandments; which, as they are Affirmative Precepts, neither do they neceſſarily preſuppoſe the deprav'd State of Man, they may be admitted, Mankind being conſider'd as under *either* Condition. But the thing is very manifeſt in relation to the other Commandments, which concern our Neighbour; for it would ſuffice plainly to have enjoyn'd Man, conſider'd as he was firſt created by GOD, that he ſhould love his Neighbour, whereto he was beforehand inclin'd by his own Nature. But how could the ſame Perſon be commanded, that he ſhould not *kill*, when Death had not as yet fall'n on Mankind, which enter'd into the World upon the account of Sin? But now there is very great Need of ſuch a Negative Command,

Command, when, inſtead of loving one another, there are ſtir'd up ſo great Feuds and Animoſities among Men, that even a great Part of them is owing purely to Envy, or an inordinate Deſire of invading what belongs to another; ſo that they make no ſcruple, not only of deſtroying thoſe that are innocent, but even their Friends, and ſuch as have done them ſignal Favours; and all this, forſooth, they are not aſham'd to diſguiſe under the ſpecious Pretence of Religion and Conſcience. In like manner, what Need was there expreſsly to forbid *Adultery*, among thoſe married Perſons, whoſe mutual Love was ſo ardent and ſincere? Or, what Occaſion was there to forbid *Theft*, when as yet Covetouſneſs and Poverty were not known, nor did any Man think that properly his own, which might be uſeful or pro-

fitable to another? Or, to what purpoſe was it to forbid the bearing *Falſe Witneſs*, when as yet there were not any to be found, who ſought after Honour and Reputation to themſelves, by Slandering and Aſperſing others with falſe and groundleſs Calumnies? So that not unfitly, you may here apply the Saying of *Tacitus*, * *Whilſt no corrupt Deſires deprav'd Mankind, the firſt Men liv'd without Sin and Wickedneſs, and therefore free from Reſtraint and Puniſhment; and whereas they coveted nothing but what was their due, they were barr'd from nothing by Fear.*

And theſe Things being rightly underſtood, may clear the way for removing this Doubt; † whether

Whether the Law of Nature

* *Vetuſtiſſimi Mortalium, nullâ adhuc pravâ libidine, ſine probro, et ſcelere, eóque ſine pœna aut coercitionibus agebant; & ubi nihil contra morem cuperent, nihil per metum vetabantur.*

Tacit. Annal. Lib. III. Cap. XXVI.

† *Eriſ. Scandic. Specim. Contr. l.* 4. § 20. *p.* 263.

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the Law was different, or the ſame, in the Primitive State of Nature, before the Fall? Where it may be briefly anſwer'd. That the moſt *material* Heads of the Law were the ſame in each State; but that many *particular* Precepts did *vary*, according to the *Diverſity* of the Condition of Mankind; or rather, that the ſame Summary of the Law was explain'd by *diverſe*, but not *contrary* Precepts; according to the different State of Man, by whom that Law was to be obſerv'd. Our Saviour reduced the Subſtance of the Law to two Heads: *Love God, and Love thy Neighbour*: To theſe the whole *Law of Nature* may be referr'd, as well in the Primitive, as in the Deprav'd State of Man; (unleſs that in the Primitive State there ſeems not any, or a very ſmall Difference between the *Law of Nature*, and *Moral Divinity.*) For that Mutual

would have been the ſame it is now, had Man continu'd in his State of Innocence.

Society, which we laid down as a Foundation to the *Law of Nature*, may very well be reſolv'd into the Love of our Neighbour. But when * we deſcend to particular Precepts, there is indeed a very great Difference, both in relation to the Commands and Prohibitions.

And as to what concerns the Commands, there are many which have place in this State of Mankind, which ſeem not to have been neceſſary in the Primitive State: And that partly, becauſe they preſuppoſe ſuch a Condition, as, 'tis not certain, could happen to that moſt happy State of Mankind; partly, becauſe there can be no Notion of them, without admitting *Miſery* and *Death*, which were unknown there: As for Inſtance, we are now enjoyn'd by the Precepts of the *Law of Nature*, not to deceive

* *Spicileg. c.* 1. §. 17.

one

one another in Buying or Selling, not to make uſe of falſe Weights or Meaſures, to repay Money that is lent, at the appointed Time. But it is not yet evident, whether, if Mankind had continu'd without Sin, there would have been drven any Trade and Commerce, as there is now in the World; or whether there would then have been any Occaſion for the Uſe of Money. In like manner, if ſuch Kind of Communities as are now adays, were not to be found in the State of Innocence, there would be then likewiſe no Occaſion for thoſe Laws which are preſuppos'd as requiſite for the well-ordering and Government of ſuch Societies. We are alſo now commanded by the *Law of Nature*, *To ſuccour thoſe that are in Want. To relieve thoſe that are oppreſſed. To take care of Widows and Orphans.* But it would be to no purpoſe

poſe to have inculcated theſe Precepts to thoſe who were no ways ſubject to Miſery, Poverty, and Death. The *Law of Nature* now enjoyns us, *To forgive Injuries*; and, *To uſe our utmoſt Endeavours towards the promoting of Peace amongſt all Mankind.* Which would be unneceſſary among thoſe who never offended againſt the Laws of Mutual Society. And this too is very evident in the Prohibitory Precepts which relate to the Natural, not Poſitive, Law. For although every Command does virtually contain in it ſelf a Prohibition of the oppoſite Vice; (as, for Inſtance, he that is commanded to love his Neighbour, is at the ſame time forbidden to do ſuch Actions, as may any ways thwart or contradict his Duty of Love:) Yet it ſeems ſuperfluous that theſe things ſhould be ordain'd by expreſs Commands, where there are no diſorderly

ly Inclinations to excite Men to the committing ſuch Wrongs. For the Illuſtration of which, this may be taken notice of, that * *Solon* would by no Publick Law enact any Puniſhment for *Parricides*, becauſe he thought that no Child could be guilty of ſo horrid an Impiety. In like manner we find an Account, in the † Hiſtory of the *Weſt-Indies*, concerning the People of *Nicaragua*; that in their Laws no Puniſhment was appointed for thoſe who ſhould kill the *Cacique*, by which Name they call their Princes; becauſe, ſay they, there can be no Subject, who would contrive or perpetrate ſo baſe an Action. I am afraid it may ſavour too much of Affectation to enlarge any farther in the

* *Diog. Laert. lib.* 1. § 59. *Edit. Amſtelod.*

† *Franc, Lopez de Gomara, Hiſt. Gene ral. IndOccid. Cap.* 207.

Proof

Proof of what is in it ſelf ſo clear and evident. Yet I ſhall add this one Example, fitted to the meaneſt Capacity. Suppoſe there are two Children, but of different Diſpoſitions, committed to the Care of a certain Perſon: One of which is Modeſt and Baſhful, taking great delight in his Studies; the other proves Unruly, and Surly; giving himſelf over more to looſe Pleaſures, than to Learning. Now the Duty of both theſe is the ſame, To follow their Studies; but the particular Precepts, proper to each, are different; for it is ſufficient to adviſe the Former to what Kind of Studies he muſt apply himſelf, at what Time, and after what Manner they are to be follow'd: But for as the Other, he muſt be enjoyn'd under ſevere Penalties, not to Wander abroad, not to Game, not

not to ſell his Books, not to get others to make his Exerciſes, not to play the good Fellow, not to run after Harlots. Now if any one ſhould undertake, in a ſet Diſcourſe, to declaim againſt theſe things to him of the contrary Temper, the Child might very well enjoyn him Silence, and bid him inculcate them to any Body elſe, rather than to him, who takes no Delight or Pleaſure in ſuch Practices. From whence I look upon it as manifeſt, that the *Law of Nature* would have a quite different Face, if we were to conſider Man, as he was in his Primitive State of Innocence.

And now ſince the Bounds and Limits of this Science, whereby it is diſtinguiſh'd from Moral Divinity, are ſo clearly ſet down, it ought

ought at leaſt to have the ſame Privilges with other Sciences, as the Civil Law, Phyſick, Natural Philoſophy, and the Mathematicks; wherein if any Unskilful Perſon preſume to meddle, aſſuming to himſelf the Quality of a Cenſor, without any Authority, he may fairly have that objected to him, which was formerly done by * *Apelles* to *Megabyzus*, who undertook to talk at random about the Art of Painting; *Pray*, ſaid he, *be ſilent, leſt the Boys laugh at you, who pretend to talk of Matters you do not underſtand.*

NOW, upon the whole, I am content to ſubmit to the Judgment of Diſcreet and Intelligent Per-

* Rather *Zeuxis*, *Æl. V. H.* II. 2. *Plut. de. Adulat.*

ſons;

ſons; but as for Ignorant and Spiteful Detractors, 'tis better to leave 'em to themſelves, to be puniſh'd by their own Folly and Malice; ſince according to the Ancient Proverb, *The Ethiopian cannot change his Skin.*

THE

THE *Whole Duty of MAN,*

According to the

LAW of NATURE.

BOOK I. CHAP. I.

Of Human Actions in general, the Principles of 'em, and how to be accounted for, or imputed.

I. What Duty is.

WHAT we mean here by the Word DUTY, is, *That* * Action *of a Man, which is regularly order'd according to some preſcrib'd* Law, *which he is oblig'd to obey.* To the Underſtanding whereof it is neceſſary to premiſe

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* The ancient *Stoicks* call'd *Actions* by the Greek Word καθῆκον, and by the Latin OFFICIUM, and in Engliſh we uſe the Word *OFFICE* in the ſame Senſe, when we ſay, *Friendly Offices*, &c. but then the Definition hereof given by the Philoſophers, is too looſe and general, ſince thereby they underſtood nothing but an

premiſe ſomewhat, as well touching the Nature of a *Human Action*, as concerning *Laws* in general.

II. *What a Human Action.*

By a *Human Action* we mean not *every Motion* that proceeds from the Faculties of a Man; but ſuch only as have their Original and Direction from thoſe Faculties which God Almighty has endow'd Mankind withal, diſtinct from Brutes; that is, ſuch as are undertaken by the Light of the *Underſtanding*, and the Choice of the *Will*.

III. *Human Capacity. Knowing and Chuſing* L. N. N. l. 1. c. 1. § 2 c. 3. § 1.

For it is not only put in the Power of Man to *know* the various Things which appear in the World, to *compare* them one with another, and from thence to form to himſelf new *Notions*; but he is able to look forwards, and to conſider *what* he is to do, and to carry himſelf to the Performance of it, and this to do after ſome certain *Manner*, and to ſome certain *End*; and then he can collect what will be the Conſequence thereof. Beſide, he can make a *Judgment* upon Things already done, whether they are done agreeably to their Rule. Not that all a Man's Faculties do exert themſelves continually, or after the ſame manner, but ſome of them are ſtir'd up in him by an internal Impulſe; and when rais'd, are by the ſame regulated and guided. Neither beſide has a Man the ſame Inclination to every Object; but ſome he Deſires, and for others he has an Averſion: And often, though

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Action conformable to Reaſon. As may appear from a Paſſage of *Cicero* (*de Fin. Bon. & Mal. L. 3. c. 17.*) *Quod autem ratione actum ſit, id OFFICIUM appellamus.* See alſo *De Offic. l. 1, c. 3. & Diogenes Laertius Lib.* VII. *Sect.* 107, 108.

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an Object of Action be before him, yet he *ſuſpends* any Motion towards it; and when many Objects offer themſelves, he *chuſes* one and *refuſes* the reſt.

IV. *Human Underſtanding.* L. N. N. l. 1. c. 3.

As for that Faculty therefore of comprehending and judging of Things, which is called the *Underſtanding*; it muſt be taken for granted, firſt of all, * That every Man of a mature Age, and entire Senſe, has ſo much Natural Light in him, as that, with *neceſſary* Care, and due Conſideration, he may rightly comprehend, at leaſt thoſe *general Precepts* and *Principles* which are requiſite in order to paſs our Lives here honeſtly and quietly; and be able to judge that theſe are congruous to the Nature of Man. For if this, at leaſt, be not admitted within the Bounds of the *Forum Humanum*, [or Civil Judicature] Men might pretend an invincible Ignorance for all their Miſcarriages; † becauſe no Man *in foro humano* can be condemn'd for having violated a Law which it was above his Capacity to comprehend.

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* This is evident from the Example of the *Heathen*, and the Holy Scriptures are expreſs in this Point; for thus they ſay: *For when the Gentiles, which have not the Law* (Written or Revealed, as was that of *Moſes*) *do by NATURE the things contained in the Law, theſe having not the Law are a Law unto themſelves: Which ſhew the Work of the Law written in their Hearts, their Conſcience alſo bearing Witneſs, and their Thoughts the mean while accuſing, or elſe excuſing one another*; (that is, when they do ill, they condemn themſelves in their own Conſcience, and on the contrary, when they do well, they have in themſelves an inward Approbation and Satisfaction: From whence it plainly appears they have Ideas of Good and Evil.) *Rom.* ii. 14, 15.

† *L. N. N. l.* 1. *c.* 3. § 3. *Apol.* § 21. *Erid. Scand. p.* 37.

V. *What is meant by* Conſcience rightly inform'd, *and what by* Probable Conſcience. *L. N. N. l.* 1. *c.* 3. § 5.

THE *Underſtanding* of Man, when it is *rightly inſtructed* concerning that which is to be done or omitted, and this ſo, as that he is able to give certain and undoubted Reaſons for his Opinions, is wont to be call'd CONSCIENCE RIGHTLY INFORM'D: That is, govern'd by ſure Principles, and ſettling its Reſolutions conformably to the Laws. But when a Man has indeed entertain'd the *true Opinion* about what is to be done or not to be done, the Truth whereof yet he is not able to make good by *Reaſoning*; but he either drew ſuch his Notion from his Education, way of Living, Cuſtom, or from the Authority of Perſons wiſer or better than himſelf; and no Reaſon appears to him that can perſuade the contrary, this uſes to be call'd *Conſcientia probabilis*, CONSCIENCE grounded upon PROBABILITY. And by this the greateſt part of Mankind are govern'd, it being the good Fortune of few to be able to enquire into, and to know, the Cauſes of Things.

VI. *Conſcience doubting.* L. N. N. l. 1. c. 3. § 8.

AND yet it chances often, to ſome Men eſpecially in ſingular Caſes, that Arguments may be brought on *both* ſides, and they not be Maſters of ſufficient *Judgment* to *diſcern* clearly which are the ſtrongeſt and moſt weighty. And this is call'd a * DOUBTING CONSCIENCE. In which Caſe this is the Rule: *As long as the Underſtand-*

* A *ſcrupulous Conſcience*, proceeding moſtly from Weakneſs and Superſtition, is only to be help'd by better Information. Here our Author's Definition of *Conſcience* may be noted, that it is an Act of the Mind judging of what a Man has omitted or done, according to ſome *Rule* to which he was rightly oblig'd. Nay, in ſtrict Senſe, to *act* againſt *Conſcience* is no other than wittingly and willingly to do Evil.

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ing is unſatisfied and in doubt, whether the thing to be done be good or evil, the doing of it is to be deferr'd. For to ſet about doing it before the Doubt is anſwer'd, implies a ſinful Deſign, or at leaſt a Neglect of the Law.

VII. *Error, vincible and invincible.* L. N. N. l. 1. c. 3. § 11.

MEN alſo oftentimes have *wrong Apprehenſions* of the matter, and take that to be true which is falſe; and then they are ſaid to be in an *Error*; and this is called *Vincible Error*, when a Man by applying due Attention and Diligence might have prevented his falling thereinto; and it's ſaid to be *Invincible Error*, when the Perſon, with the utmoſt Diligence and Care that is conſiſtent with the common Rules of Life, could not have avoided it. But this ſort of *Error*, at leaſt, among thoſe who give their Minds to improve the Light of Reaſon, and to lead their Lives regularly, happens not in the *common Rules* of living, but only in *peculiar Matters*. For the Precepts of the Law of Nature are plain; and that Legiſlator who makes poſitive Laws, both does and ought to take all poſſible Care, that they may be underſtood by thoſe who are to give Obedience to them. So that this Sort of *Error* proceeds only from a ſupine *Negligence*. But in *particular Affairs* 'tis eaſie for ſome Error to be admitted, againſt the Will, and without any Fault of the Perſon, concerning the Object and other * Circumſtances of the Action.

WHERE

* Such Circumſtances are the *Manner*, the *Intention*, the *Inſtrument*, the *Quality* of the Thing done, &c. Thus, for Example, A Man may happen to kill another without any Thought of doing ſo; he may miſtake him for an Enemy, may give him Poiſon when he thinks what he

WHERE Knowledge ſimply is wanting as to the Thing performed or omitted, ſuch Defect of Knowledge is call'd *Ignorance.*

VIII. *Of* Ignorance, *and the various Kinds of it.* L. N. N. l. 1. c. 3. § 10.

THIS *Ignorance* may be two Ways conſider'd, either with reſpect to its *Origin*, or with reſpect to its *Influence on the Action.* With reference to this latter, *Ignorance* is of two Sorts, one being the Cauſe of the Thing ignorantly done, the other not; on which account the firſt of theſe is call'd *Efficacious Ignorance*, the other *Concomitant.*

EFFICACIOUS Ignorance is the Want of ſuch Knowledge as, had it not been wanting, would have hindred the Action: Such was *Abimelech*'s Ignorance, *Gen.* xx. 4, 5. who, had he known *Sarah* to have been *Abraham*'s Wife, had never entertain'd any Thoughts of taking her to himſelf. *Concomitant Ignorance* is the Want of ſuch Knowledge, as had it not been wanting, would not have hindred the Fact: As ſuppoſe a Man ſhould kill his Enemy by a chance Blow, whom he would otherwiſe have kill'd, had he known him to have been in that particular Place.

IGNORANCE with reſpect to its *Origin* is either *Voluntary* or *Involuntary. Voluntary Ignorance* is either *contracted* by mere negligence, idleneſs and unattention; or elſe *affected*, that is, proceeding from a direct and formal Contempt of the means of informing our ſelves in what we were able, and what it was our Duty to come to the knowledge of. *Involuntary Ignorance* conſiſts in the want of knowing ſuch Things, as it was neither in our Power, nor a part of our Duty to come to the knowledge of.

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he gives him is wholſom Liquor. Tho' we may believe Actions ſo circumſtantiated to be innocent, yet no Man can innocently aſſert, that Murder or Poiſoning are lawful.

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This likewiſe is of two Sorts: The former is, when in doing a Thing a Man is not able to overcome the Ignorance from which it proceeds, and yet is in Fault for falling into that Ignorance; which is the Caſe of Drunken Men. The latter is, when a Man is not only ignorant of ſuch Things as could not be known before the Action, but is alſo * free from any Blame upon the account of his falling into that Ignorance, or his continuing in it.

IX. *The Will, unforced and free.* L. N. N. l. 1. c. 4.

THE other Faculty, which does peculiarly diſtinguiſh Men from Brutes, is called the *Will*; by which, as with an internal Impulſe, Man *moves himſelf* to Action, and *chuſes* that which beſt pleaſes him; and *rejects* that which ſeems unfit for him. Man therefore has thus much from his *Will*: Firſt, that he has a Power to act *willingly*, that is, he is not determin'd by any intrinſick *Neceſſity* to do this or that, but is himſelf the Author of his own Actions: Next, that he has a Power to act *freely*, that is, upon the Propoſal of one Object, he may *act* or not *act*, and either entertain or reject; or if divers Objects are propos'd, he may *chuſe* one and *refuſe* the reſt. Now whereas among human Actions ſome are undertaken for their *own* Sakes, others becauſe they are ſubſervient to the ataining of ſomewhat *farther*; that is, ſome are as the *End*, and others as *Means*: As for the *End*, the Will is thus far concern'd, That being once known, this firſt *approves* it, and then moves

* There is no other but this laſt ſort of Ignorance that is really involuntary and invincible, and capable entirely to excuſe Men in doing any prejudicial Acts; for it is Men's own Faults that they fall into any of the forementioned ſorts of Ignorance.

vigorouſly towards the *atchieving* thereof, as it were, driving at it with more or leſs earneſtneſs; and this *End* once *obtain'd*, it ſits down quietly and *enjoys* its Acquiſt with Pleaſure. For the *Means*, they are firſt to be approv'd, then ſuch as are moſt fit for the Purpoſe are *choſen*, and at laſt are *apply'd* to Uſe.

X. *The Will ſpontaneous chargeable with the Action.* L. N. N. l. 1. c. 4. § 2.

BUT as Man is accounted to be the *Author* of his *own Actions*, becauſe they are voluntarily undertaken by himſelf: So this is chiefly to be obſerv'd concerning the Will, to wit, that its *Spontaneity*, or natural Freedom, is at leaſt to be aſſerted in thoſe Actions, concerning which a Man is wont to give an Account before any human Tribunal. For *where* an abſolute *Freedom* of *choice* is wholly taken away, *there* not the Man who *acts*, but he that *impoſed* upon him the Neceſſity of ſo doing, is to be reputed the *Author* of that Action, to which the other unwillingly miniſtred with his Strength and Limbs.

XI. *The Will variouſly affected.* L. N. N. l. 1. c. 4. § 4.

FARTHERMORE, though the Will do always deſire *Good* in general, and has continually an averſion for *Evil* alſo in general; yet a great *Variety* of *Deſires* and *Actions* may be found among Men. And this ariſes from hence, that all Things that are Good and Evil do not appear *purely* ſo to Man, but *mixt* together, the good with the bad, and the bad with the good; and becauſe different Objects do particularly affect divers Parts, as it were, of a Man; for inſtance, ſome regard that good Opinion and Reſpect that a Man has for himſelf; ſome affect the outward Senſes; and ſome that Love of himſelf, from which he deſires his own Preſervation. From whence it is, that thoſe of the

firſt

firſt Sort appear to him as *reputable*; of the ſecond as *pleaſant*; and of the laſt as *profitable*: And accordingly as each of theſe have made a powerful Impreſſion upon a Man, it brings upon him a peculiar Propenſity towards that way; whereto may be added the particular *Inclinations* and *Averſions* that are in moſt Men to ſome certain Things. From all which it comes to paſs, that upon any Action ſeveral *Sorts* of *Good* and *Evil* offer themſelves, which either *are* true or *appear* ſo; which ſome have more, ſome leſs Sagacity to *diſtinguiſh* with ſolidity of Judgment. So that 'tis no wonder that one Man ſhould be carried eagerly on to that which another perfectly abhors.

XII. *The Will byaſs'd by Natural Inclinations.* L. N. N, l. 1. c. 4. § 5.

But neither is the Will of Man always found to ſtand *equally* poiſed with regard to every Action, that ſo the Inclination thereof to this or that Side ſhould come only from an *Internal Impulſe*, after a due Conſideration had of all its Circumſtances; but it is very often puſht on one way rather than another by *ſome outward Movements*. For, that we may paſs by that univerſal Propenſity to Evil, which is in all Mortals (the Original and Nature of which belong to the Examination of another * *Forum*;) firſt, a *peculiar Diſpoſition of Nature* puts a particular kind of *byaſs* upon the Will, by which ſome are ſtrongly inclin'd to certain *ſorts* of Actions; and this is not only to be found in ſingle *Men*, but in whole *Nations*. This ſeems to proceed from the Temperature of the Air that ſurrounds us, and of the Soil; and from that Conſtitution of our Bodies which either was deriv'd to us in the Seed of our *Parents*, or was occaſion'd in us by our *Age*, *Diet*, the want or enjoyment of *Health*, the

* The Judgment of the Divines.

the Method of our Studies, or *way* of *Living*, and Cauſes of that ſort; beſide the various *formations* of the *Organs*, which the *Mind* makes uſe of in the Performance of its ſeveral Offices, and the like. And here, beſide that a Man may with due Care very much *alter* the *Temperament* of his Body, and *repreſs* the Exorbitances of his natural *Inclination*, it is to be noted, that how much Power ſoever we attribute hereto, yet it is not to be underſtood to be of that Force as to hurry a Man into ſuch a Violation of the *Law* of *Nature*, as ſhall render him obnoxious to the *Civil Judicature*, where evil *Deſires* are not animadverted on, * provided they break not forth into external *Actions*. So that after all the Pains that can be taken to repel Nature, if it takes its full Swinge, yet it may ſo far be reſtrain'd as not to produce *open Acts* of Wickedneſs; and the *Difficulty* which happens in vanquiſhing theſe Propenſities is abundantly recompens'd in the *Glory* of the Conqueſt. But if theſe Impulſes are ſo ſtrong upon the Mind, that they cannot be contain'd from breaking forth, yet there may be found a Way, as it were to draw them off, without Sin.

XIII. *By Cuſtom or Habitude.* L. N. N. l. 1. c. 4. § 6.

THE frequent *Repetition* of Actions of the ſame kind does alſo *incline* the Will to do certain Things; and the Propenſity which proceeds from hence is called *Habit* or *Cuſtom*; for it is by this that any Thing is undertaken readily and willingly; ſo that the Object being preſented, the Mind ſeems to be forced thither-

* *Hugo Grotius de Jure Belli & Pacis, Lib.* II. *c.* 20. § 18.

ward,

ward, or if it be abſent, the ſame is earneſtly deſirous of it. Concerning which this is to be obſerv'd, That as there appears to be no *Cuſtom*, but what a Man may, by applying a due Care, *break* and *leave off*; ſo neither can any ſo far put a force upon the Will, but that a Man may be able at any Time to reſtrain himſelf from any *external Acts* at leaſt, to which by that he is urged. And becauſe it was in the Perſons *own Power* to have contracted this *Habit* or not, whatſoever eaſineſs it brings to any Action, yet if that Action be *good*, it loſes nothing of its Value therefore, as neither doth an *evil* Thing abate ought of its Pravity. But as a *good Habit* brings *Praiſe* to a Man, ſo an *ill* one ſhews his *Shame*.

XIV. *By Paſſion.* L. N. N. l. 1. c. 4. § 7.

It is alſo of great Conſideration, whether the Mind be in a *quiet* and *placid* State, or whether it be affected with thoſe peculiar Motions we call the *Paſſions*. Of theſe it is to be known, that how violent ſoever they are, a Man with the right Uſe of his *Reaſon* may yet conquer them, or at leaſt contain them ſo far within Bounds, as to hinder them from producing thoſe Actions they prompt Men to do. * But whereas of the *Paſſions* ſome are rais'd from the Appearance of *Good*, and others of *Evil*; and do urge either to the procuring of ſomewhat that is *acceptable*, or to the avoiding of what is *miſchievous*, it is agreeable to Human Nature, that *theſe* ſhould meet among Men more *favour* and *pardon*, than *thoſe*; and that according to ſuch degrees as the Miſchief that excited them was

* *Apolog. Sect.* 22. *in Erid. Scandic. p.* 39.

more

more hurtful and intolerable. For to *want* a *Good* not altogether neceſſary to the Preſervation of Nature is accounted more *eaſie*, than to *endure an Evil* which tends to Nature's Deſtruction.

XV. *By intoxication.* L. N. N. l. 1. c. 4. § 8.

FARTHERMORE, as there are * certain Maladies, which take away all Uſe of the *Reaſon* either perpetually or for a time: So 'tis cuſtomary in many Countries, for Men on purpoſe to procure to themſelves a certain kind of *Diſeaſe* which goes off in a ſhort time, but which very much confounds the Reaſoning Faculty. By this we mean *Drunkenneſs*; proceeding from certain kinds of Drink, and Fumes, which hurry and diſturb the Blood and Spirits, thereby rendring Men very prone to *Luſt*, *Anger*, *Raſhneſs* and immoderate *Mirth*; ſo that many by *Drunkenneſs* are ſet as it were beſide themſelves, and ſeem to have put on *another Nature*, than that which they were of, when *ſober*. But as this does not always take away the *whole* Uſe of *Reaſon*; ſo, as far as the Perſon does *willingly* put himſelf in this State, it is apt to procure an *Abhorrence* rather than a *favourable Interpretation* of what is done by its Impulſe.

XVI. *Actions Involuntary, mixt.* L. N. N. l. 1. c. 4. § 11.

Now of Human Actions, as thoſe are call'd *Voluntary*, which proceed from, and are directed by the Will; ſo if any thing be done *wittingly*, altogether againſt the Will, theſe are call'd *Involuntary*, taking the Word in the nar-

* The Effect of theſe ſort of Maladies, and of *Drunkenneſs* is not, to ſpeak properly, a giving to the Will a bent and inclination to this or that thing, ſo much as an entire deſtroying the Principle of Human Actions; becauſe Men under theſe Circumſtances know not any thing of what they do.

roweſt

roweſt ſenſe; for taking it in the largeſt, it comprehends even thoſe which are done through *Ignorance*. But *Involuntary* in this place is to ſignifie the ſame as *forc'd*; that is, when by an external Power which is ſtronger, a Man is compell'd to uſe his Members in any Action, to which he yet ſignifies his Diſſent and Averſion by Signs, and particularly by counterſtriving with his Body. Leſs properly thoſe Actions are alſo called *Involuntary*, which by the Impoſition of a great Neceſſity are *choſen* to be done, as the leſſer Evil; and for the Acting whereof the Perſon had the greateſt Abomination, had he not been ſet under ſuch Neceſſity. Theſe Actions therefore are call'd *Mixt*. With *Voluntary Actions* they have this in common, that in the preſent State of Things the Will *chuſes* them as the leſſer Evil. With the *Involuntary* they are after a ſort the ſame, as to the Effect, becauſe they render the Agent either not at all, or not *ſo heinouſly* blameable, as if they had been done ſpontaneouſly.

XVII. *Voluntary Actions imputable.* L. N. N. l. 1, c. 5. § 5.

Those Human Actions then which proceed from, and are directed by the *Underſtanding* and the *Will*, have particularly this natural Propriety, * that they may be *imputed* to the Doer; that is, that a Man may juſtly be ſaid to be the Author of them, and be oblig'd to render an *Account* of ſuch his Doing; and the *Conſequences* thereof, whether good or bad, are chargeable upon him. For there can be no truer Reaſon why any Action ſhould be *imputa-*

* L. N. N. *l.* 1. *c.* 5. §. 3. *Spicileg. Jur. Nat.* §. 12. *in Erid. Scandic. Page* 343.

ble

ble to a Man, than that he did it either mediately or immediately *knowingly* and *willingly*; or that it was in his Power to have done the the ſame or to have let it alone. Hence it obtains as the prime Axiom in Matters of Morality which are liable to the Human *Forum*: That *every Man is accountable for all ſuch Actions, the Performance or Omiſſion of which were in his own Choice.* Or, which is tantamount, That *every Action that lies within a Man's Power to perform or omit, is chargeable upon him who might or might not have done it.* So on the contrary, *no Man can be reputed the Author of that Action, which neither in it ſelf nor in its cauſe, was in* his Power.

XVIII. *Concluſions from the Premiſſes.* FROM theſe Premiſſes we ſhall deduce ſome particular *Propoſitions*, by which ſhall be aſcertain'd, what every Man ought to be *accountable* for; or, in other Words, which are thoſe Actions and Conſequences of which any one is to be charged as *Author*.

The firſt Concluſion. L. N. N. l. 1. c. 5. § 6. NONE *of thoſe Actions which are done by another* Man, *nor any Operation of whatſoever other* things; *neither any* Accident, *can be imputable to any Perſon, but ſo far forth as it was in* his Power, *or as he was* oblig'd *to guide ſuch Action.* For nothing is more common in the World, than to *ſubject* the Doings of *one Man* to the Manage and Direction of *another*. Here then, if any thing be perpetrated by one, which had not been done, if the other had performed his *Duty* and exerted his *Power*; this Action ſhall not only be chargeable upon him who *immediately* did the Fact, but upon the other alſo who *neglected* to make uſe of his *Authority* and *Power*. And yet this is to be underſtood with ſome reſtriction;

ſtriction; ſo as that *Poſſibility* may be taken *morally*, and in a *large* Senſe. For no *Subjection* can be ſo *ſtrict*, as to extinguiſh *all* manner of *Liberty* in the Perſon ſubjected; but ſo, that 'twill be in his Power to reſiſt and act quite contrary to the Direction of his *Superior*; neither will the State of *Human Nature* bear, that any one ſhould be perpetually affix'd to the ſide of another, ſo as to obſerve *all* his Motions. Therefore when a *Superiour* has done every thing that was requir'd by the *Rules* of his *Directorſhip*, and yet ſomewhat is acted amiſs, this ſhall be laid only to the charge of *him* that *did* it. Thus, whereas *Man* exerciſes Dominion over other *Animals*, what is done by them to the detriment of another, ſhall be charged upon the *Owner*, as ſuppoſing him to have been wanting of due *Care* and *Circumſpection*. So alſo all thoſe Miſchiefs which are brought upon another, may be *imputed* to that Perſon, who when he *could* and *ought*, yet did not take out of the way the Cauſe and Occaſion thereof. Accordingly it being in the Power of Men to *promote* or *ſuſpend* the Operations of many *Natural Agents*, whatſoever Advantage or Damage is wrought by theſe, *they* ſhall be accountable for, by whoſe *application* or *neglect* the ſame was occaſion'd. Beſide, ſometimes there are extraordinary Caſes, when a Man ſhall be charged with ſuch Events as are above human Direction, as when *God* ſhall do particular *Works* with regard to ſome *ſingle* Perſon. [So the Peſtilence in *Iſrael* may be charg'd upon *David* for numbring the People; 2 *Sam.* xxiv. or the three Year's Drought to the Prayers of *Elijah*, 1 *Kings* xvii. and the like.] Theſe and ſuch

ſuch Caſes being excepted, *no Man is reſponſible but for his own Actions.*

XIX. *The ſecond Concluſion.* L. N. N. l. 1. c. 5. § 7.

WHATSOEVER Qualifications *a Man has or has not, which it is not in his* Power *to exert or not to exert, muſt not be* imputed *to him, unleſs ſo far as he is wanting in* Induſtry *to ſupply ſuch Natural Defect, or does not rouſe up his native Faculties.* So, becauſe no man can give himſelf an *Acuteneſs* of *Judgment* and *Strength* of *Body*; therefore no one is to be *blam'd* for Want of either, or *commended* for having them, except ſo far as he *improv'd*, or *neglected* the cultivating thereof. Thus *Clowniſhneſs* is not blameable in a Ruſtic, but in a *Courtier* or *Citizen.* And hence it is, that thoſe Reproaches are to be judg'd extremely abſurd, which are grounded upon Qualities, the Cauſes of which are not in our Power, as, *Short Stature*, a deform'd *Countenance*, and the like.

XX. *The Third Concluſion.* L. N. N. l. 1. c. 5. § 10.

FARTHER, *We are not chargeable for thoſe Things, which we do thro' Invincible Ignorance.* Becauſe we have nothing but the Light of our Underſtanding to direct our Actions by; and in this caſe it is ſuppoſed that the Agent neither had, nor *poſſibly* could have, this Light for his Direction at that time, and that it was not his own Fault that made it not *poſſible* for him then to come at proper Knowledge. When we ſay not *poſſible* for him to know, we muſt be underſtood in a Moral not a Phyſical Senſe; that is, it was not poſſible to come to this Knowledge by the uſual and common Means, by uſing his beſt *Care* and *Attention*, and by giving ſuch *Diligence*, *Precaution*, and *Circumſpection*, as in all reaſon may be thought ſufficient for the attaining ſuch Knowledge.

Ignorance

Ignorance of a Man's *Duty*, or of thoſe *Laws* from whence his *Duty* ariſes, or *Error* about either of them, does not excuſe from blame. For whoſoever impoſes *Laws* and *Services*, is wont and ought to take care that the Subject have *notice* thereof. And theſe Laws and Rules of Duty generally are and ſhould be order'd to the *Capacity* of ſuch *Subject*, if they are ſuch as he is obliged to *know* and *remember*. Hence, he who is the *Cauſe* of the *Ignorance* ſhall be bound to anſwer for thoſe *Actions* which are the Effects thereof. XXI. *The fourth Concluſion.*

He who, not by his own fault, wants an *Opportunity* of doing his *Duty*, ſhall not be accountable, becauſe he has not done it. An *Opportunity* of doing our Duty comprehends theſe four requiſite Conditions: 1. That an *Object* of Action be ready: 2. That a proper *Place* be had, where we may not be hindred by others, nor receive any Miſchief: 3. That we have a fit *Time*, when Buſineſs of greater Neceſſity is not to be done, and which is equally ſeaſonable for thoſe Perſons who are to concur with us in the Action: and 4. Laſtly, That we have natural *Force ſufficient* for the performancer. For ſince an Action cannot be atchiev'd without theſe, 'twould be abſurd to blame a Man for not acting, when he had not an *Opportunity* ſo to do. Thus, a Phyſician cannot be accus'd of *Sloth*, when no body is ſick to employ him. Thus, no Man can be *liberal*, who wants himſelf. Thus he cannot be reprov'd for *burying* his Talent who having taken a due care to ſet himſelf in an uſeful Station, has yet miſs'd of it: tho' it be ſaid, * *To whom much is given, from* XXII. *The fifth Concluſion.*

* The Words of our Bleſſed Saviour, *Luc.* xii. 48.

him much ſhall be requir'd. * Thus we cannot blow and ſup all at once.

XXIII. *The ſixth Concluſion.* L. N. N. l. 1. c. 5. § 8.

No Man is accountable *for not doing that which* exceeded *his Power, and which he had not Strength ſufficient to hinder or accompliſh.* Hence that Maxim, *To Impoſſibilities there lies no Obligation.* But this Exception muſt be added, Provided, that by the Perſon's *own Fault he* has not *impaired*, or *loſt* that Strength which was neceſſary to the Performance; for if ſo, he is to be treated after the ſame manner, as if he *had* all that Power which he *might* have had: Otherwiſe it would be eaſie to elude the Performance of any difficult Obligation, by weakening one's ſelf on purpoſe.

XXIV. *The ſeventh Concluſion.* L. N. N. l. 1. c. 5. § 9.

NEITHER can thoſe things be *imputable*, which one acts or ſuffers by *Compulſion.* For it is ſuppoſed, that 'twas above his *power* to decline or avoid ſuch doing or ſuffering. But we are ſaid after a twofold manner to be *compell'd*; one way is, when another that's ſtronger than us *violently forces* our Members to do or endure ſomewhat; the other, † when one more powerful ſhall *threaten* ſome grievous Miſ-

* Our Author, who frequently makes uſe of *Plautus*, does without doubt in this place allude to the *Moſtellaria, Act.* 3. *Sc.* 2. *v.* 104, 105.

Simul flare ſorbereque haud facile
Eſt: ego hic eſſe & illic ſimul haud potui.

† The Author ſeems here to give too great an Allowance to this ſecond ſort of *Compulſion.* It muſt indeed be owned, that it greatly leſſens the Offence, eſpecially in Courts of Human Judicature; but then it frees us not from Imputation intirely in the Sight of God. The Example our Author gives of the Sword or Ax reaches not the Caſe, for they are Inſtruments meerly paſſive: But

Miſchief (which he is immediately able to bring upon us) unleſs we will, as of our *own* accord, apply our ſelves to the doing of this, or abſtain from doing that. For in theſe caſes unleſs we are *expreſsly obliged* to take the Miſchief to our ſelves which was to be done to another, he that ſets us under this *Neceſſity*, is to be reputed the *Author* of the Fact; and the ſame is no more chargeable upon us, than a *Murder* is upon the Sword or Ax which was the *Inſtrument*.

But on the other hand, a Perſon who is no other ways forced but by the Menaces of ſome great Miſchief, without any phyſical or irreſiſtible Violence, acts with ſome degree of Willingneſs, and gives a ſort of a Concurrence to an Action which he plainly knows to be ill, when he is thus conſtrained to do it. There is but one Caſe wherein, with a ſafe Conſcience, we may obey the injurious Orders of a Superior, in order to avoid the Miſchiefs he menaces us with in caſe of a Refuſal; and that is, when the Perſon, on whom the Miſchief is to fall by our Compliance with the injurious Orders of a Superior, does himſelf conſent that we ſhould avoid the Miſchief threatned to us, by doing the Action commanded, altho' it be injurious to him, and rather contents himſelf to ſuffer ſuch Injury, than to expoſe us to the Violence of the Perſon menacing: But this alſo muſt be underſtood only of ſuch Caſes as the Perſon has it in his Power to give Conſent, namely, when the Injury he conſents to ſuffer is the Violation only of ſuch a Right as is in the power of the ſuffering Perſon to quit; otherwiſe this Caſe holds not good; for ſhould any one, for example, conſent that I ſhould act the Command of another to kill him, ſuch conſent would not acquit me of the Guilt of Murder, ſhould I by the Menaces of any one be conſtrained to take away his Life. *See L. N. N. lib.* I. *cap.* V. § 9. *& lib.* VIII. *cap.* I. § 6.

XXV. *The eighth Conclusion.* THE Actions of those who *want* the Use of their *Reason* are not imputable; because they cannot distinguish clearly what they do, and bring it to the Rule. Hitherto appertain the Actions of *Children*, before their reasoning Faculties begin to exert themselves. For though they are now and then chid or whipt for what they do; yet it is not from hence to be concluded, that their Actions are really Crimes, or that in strictness they deserve this punishment for them; which they receive not as from Justice, but in Prudence to prevent their growing troublesome to others, and lest they contract ill Habits in themselves when they are little, and so keep them when they are grown up. So also the Doings of *Franticks*, *Crackbrains*, and *Dotards* are not accounted *Human Actions*, nor *imputable* to those who contracted such incapacitating Disease, without any *fault* of their *own*.

XXVI. *The ninth Conclusion.* L. N. N. l. 1. c. 5 § 11. LASTLY, A Man is not chargeable with what he seems to do in his *Dreams*; unless by *indulging himself* in the *Day-time* with idle Thoughts, he has deeply impressed the *Ideas* of such Things in his Mind; (tho' Matters of this Sort can rarely be within the Cognizance of the Human *Forum*.) For indeed the Fansie in Sleep is like a Boat adrift without a Guide; so that 'tis impossible for any Man to order what Ideas it shall form.

XXVII. *Imputation of another's Actions.* L. N. N. l. 1. c. 5. § 14. BUT concerning the *Imputation* of *another* Man's Actions, it is somewhat more distinctly to be observ'd, that sometimes it may so happen, that an Action ought not at all to be charged upon him that *immediately* did it, but upon another who made use of this only as an *Instru-*

Inſtrument. But it is more frequent, that it ſhould be imputed *both* to *him* who perpetrated the thing, and to the *other*, who by doing or omitting ſomething, ſhew'd his *concurrence* to the Action. And this is chiefly done after a three-fold manner; either, 1. As the other was the *principal* Cauſe of the Action, and this *leſs principal.* Or, 2. As they were both *equally* concern'd. Or, 3. As the other was *leſs principal*, and he that did the Act was *principal.* To the firſt Sort belong thoſe who ſhall *inſtigate* another to any thing by their Authority; thoſe who ſhall give their neceſſary *Approbation*, without which the other could not have acted; thoſe who *could* and *ought* to have hindred it, but did not. To the ſecond Claſs appertain, thoſe who *order* ſuch a thing to be done, or *hire* a Man to do it; thoſe who *aſſiſt*; thoſe who afford *harbour* and *protection*; thoſe who had it in their *Power*, and whoſe *Duty* it was to have ſuccour'd the wronged Perſon, but refus'd it. To the third Sort are refer'd ſuch as are of * *counſel* to the Deſign; † thoſe that *encourage* and *commend* L. N. N. l. 1. c. 5. § 14.

* That is, when, for example, a Man adviſes another to ſteal this or that thing, ſhewing him at the ſame time the propereſt Manner to take it without diſcovery, the favourableſt Time of conveying himſelf into the Houſe where it is, the Place where the thing is repoſited, the beſt Way of getting off with it, and the like Particulars; but this is not meant of ſimply adviſing any one in general terms to ſteal for his Support rather than ſtarve. *L. N. N. lib.* I. *cap.* V. § 14.

† That is, provided this Advice, theſe Encouragements and Commendations contribute to make him do the criminal Act; for in ſuch caſe only the Imputation lies; otherwiſe the Perſon thus counſelling and encouraging is

mend the Fact before it be done; and ſuch as *incite* Men to ſinning by their *Example*, and the like.

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only guilty of the ill Intention which he had. *Lib.* III. *cap.* I. § 4.

CHAP. II.

Of the RULE *of Human Actions, or of* LAWS *in general; and the different Qualifications of thoſe Actions.*

I. *The Neceſſity of a Rule.*

BECAUSE all *Human Actions* depending upon the *Will*, have their Eſtimate according to the concurrence thereof; but the *Will* of every Perſon not only differs in many reſpects from that of all others, but alſo alters and changes it ſelf, becoming different in the ſame Perſon at one time from what it was before at another; therefore to preſerve Decency and Order among Mankind, it was neceſſary there ſhould be ſome *Rule*, by which they ſhould be regulated. For otherwiſe, if, where there is ſo great a *Liberty* of the *Will*, and ſuch *Variety* of *Inclinations* and *Deſires*, any Man might do whatſoever he had a mind to, without any regard to ſome *ſtated Rule*, it could not but give occaſion to vaſt *Confuſions* among Mankind.

L. N. N. l. 2. c. 1.

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THIS *Rule* is call'd LAW; which is, * *A Decree by which the Superior obliges one that is ſubject to him, to accommodate his Actions to the Directions preſcrib'd therein.* II. *Law, defined.* L. N. N. l. 1. c. 6. § 4.

THAT this Definition may the better be underſtood, it muſt firſt be enquired, What is an *Obligation*; *whence* is its Original; *who* is capable of *lying under* an Obligation; and *who* it is that can *impoſe* it. By *Obligation* then is uſually meant, *A moral Bond, whereby we are ty'd down to do this or that, or to abſtain from doing them.* That is, hereby a kind of a Moral Bridle is put upon our *Liberty*; ſo that though the *Will* does actually drive *another* way, yet we find our ſelves hereby ſtruck as it were with an *internal* Senſe, that if our Action be not perform'd according to the *preſcript Rule*, we cannot but confeſs we have not done *right*; and if any Miſchief happen to us upon that Account, we may fairly charge *our ſelves* with the ſame; becauſe it might have been avoided, if the *Rule* had been follow'd as it ought. III. *Obligation.* L. N N. l. 1 c. 6. § 5.

AND there are two Reaſons why *Man* ſhould be ſubject to an *Obligation*; one is, becauſe he is endow'd with a *Will*, which may be divers ways *directed*, and ſo be *conform'd* to a Rule: the other, becauſe *Man* is not exempt from the Power of a *Superior*. For where the *Faculties* of any Agent are by *Nature* form'd only for *one Way* of acting, there 'tis to no purpoſe to expect any thing to be done of *choice*: and to ſuch a Creature 'tis *in vain* to preſcribe IV. *Man capable of being obliged.* L. N. N. l. 1. c. 6. § 6.

* On this Head conſult *H. Grotius de Jure Belli & Pacis*, l. 1. c. 1. § 9.

any *Rule*; becauſe 'tis uncapable of *underſtanding* the ſame, or *conforming* its Actions thereto. Again, if there be any one who has no *Superior*, then there is no *Power* that can of right impoſe a Neceſſity upon him; and if he perpetually obſerves a certain Rule in what he does, and conſtantly abſtains from doing many things, he is not to be underſtood to act thus from any *Obligation* that lies upon *him*, but from his own *good pleaſure*. It will follow then, for any one to be capable of lying under Obligation, it is neceſſary, that on the one hand he have a *Superior*, and on the other, that he be both capable of underſtanding the Rule preſcrib'd him by his Superior, and alſo endu'd with a *Will* which may be *directed* ſeveral ways; and yet which (when the Law is promulged by his Superior) knows he cannot rightly depart therefrom. And with all theſe *Faculties*, 'tis plain, Mankind is furniſh'd.

V. *Who can oblige.* I. N. N. l. 1. c. 6. § 9.

AN *Obligation* is ſuperinduced upon the Will of Men properly by a *Superior*; that is, not only by ſuch a one as being *greater* or *ſtronger*, can puniſh Gainſayers: but by him who has *juſt Reaſons* to have a Power to reſtrain the Liberty of our Will at his own Pleaſure. Now when any man has either of theſe, as ſoon as he has ſignify'd what he would have, it neceſſarily ſtirs up, in the Mind of the party concern'd, *Fear* mixt with *Reverence*; the firſt ariſes from the conſideration of his Power, the other proceeds from thoſe Reaſons on which the Authority of our Superior is founded; by which we are convinced, that had we nothing to fear from him, yet we ought to conform our Actions to his Will. For he that can give me no

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other Reaſon for putting me under an Obligation againſt my Will, beſide this, that he's too *ſtrong* for me, he truly may ſo terrifie me, that I may think it better to *obey* him for a while than ſuffer a *greater Evil:* but when this *Fear* is over, nothing any longer hinders, but that I may act after my *own Choice* and *not his.* On the contrary, he that has nothing but *Arguments* to prove that I ſhould obey him, but wants *Power* to do me any Miſchief, if I deny: I may with Impunity ſlight his Commands, except one more potent take upon him to make good his deſpis'd Authority. Now the *Reaſons* upon which one Man may *juſtly* exact *Subjection* from another, are two: Firſt, if he have been to the other the *Original* of ſome extraordinary *Good*; and if it be plain, that he deſigns the others *Welfare*, and is *able* to provide better for him than 'tis poſſible for *himſelf* to do; and on the ſame Account does actually lay *claim* to the Government of him: Secondly, if any one does *voluntarily* ſurrender his Liberty to another, and ſubject *himſelf* to his Direction.

VI. *The Legiſlator and the true meaning of the Law to be known.* L. N. N. l. 1. c. 6. § 14.

FARTHERMORE, that a Law may exert its Force in the Minds of thoſe to whom it is promulged, it is requir'd, that both the *Legiſlator and the Law alſo be known.* For no Man can pay Obedience, if he know not *whom* he is to *obey*, and *what* he is to *perform.* Now the Knowledge of the *Legiſlator* is very eaſy; becauſe from the Light of Reaſon 'tis certain the *ſame* muſt be the *Author* of all the *Laws* of *Nature*, who was the *Creator* of the *Univerſe:* Nor can any Man in *Civil Society* be ignorant *who* it is that has Power over him. Then for

for the *Laws* of *Nature*, it ſhall be hereafter declar'd how we come to the Knowledge of them. And as to the *Laws* of a Man's *Country* or *City*, the Subject has notice given of them by a *Publication* plainly and openly made. In which theſe two Things ought to be aſcertain'd, that the *Author* of the Law is he, who hath the *ſupreme Authority* in the Community; and that *this* or *that* is the true Meaning of the *Law*. The *Firſt* of theſe is known, if he ſhall promulge the Law with his *own Mouth*, or deliver it under his *own Hand*; or elſe if the ſame be done by ſuch as are *delegated* to that purpoſe by him, whoſe Authority there is no Reaſon to call in queſtion, if it be manifeſt, that ſuch their acting belongs to that *Office* they bear in the Publick, and that they are *regularly placed* in the Adminiſtration thereof; if theſe Laws are brought in uſe at judicial Proceedings, and if they contain nothing *derogatory* to the *Sovereign*'s *Power*. That the *Latter*, that is, the the true *Senſe* of the *Law* may be known, it is the Duty of thoſe who promulge it, in ſo doing to uſe the greateſt *Perſpicuity* and *Plainneſs*; and if any thing *obſcure* do occur therein, an *Explanation* is to be ſought of the *Legiſlator*, or of thoſe who are *publickly conſtituted* to give judgment according to the Laws.

VII. *Two parts of a perfect Law.* L. N. N. l. 1. c. 6. § 14.

Of every *perfect Law* there are two Parts: One, [Precept] whereby it is directed *what* is to be *done* or *omitted*: the other, [the Sanction] wherein is declared what *Puniſhment* he ſhall incur, who *neglects* to do what is commanded, or *attempts* that which is prohibited. For as, through the Pravity of Human Nature ever inclining to things forbidden, it is to no purpoſe

poſe to ſay, *Do this*, if no Puniſhment ſhall be undergone by him who diſobeys; ſo it were *abſurd* to ſay, *You ſhall be puniſh'd*, except ſome Cauſe preceeded, by which a Puniſhment was deſerv'd. Thus then all the force of a Law conſiſts in ſignifying what the *Superior requires* or *forbids* to be done, and what *Puniſhment* ſhall be inflicted upon the Violators. But the Power of *obliging*, that is, of impoſing an intrinſick Neceſſity; and the Power of *forcing*, or, by the propoſal of Puniſhments *compelling* the Obſervation of Laws, is properly in the Legiſlator, and in him to whom the Guardianſhip and Execution of the Laws is committed.

VIII. *It ought to command things poſſible and beneficial.*

WHATSOEVER is enjoyn'd by any Law, ought not only to be in the *Power* of him to perform on whom the Injunction is laid, but it ought to contain ſomewhat *advantagious* either to him or others. For as it would be *abſurd* and *cruel* to exact the doing of any thing from another, under a Penalty, which it is and always was beyond his *Power* to perform; ſo it would be ſilly and to *no purpoſe* to put a Reſtraint upon the natural Liberty of the Will of any man, if no one ſhall receive any Benefit therefrom.

IX. *Power of Diſpenſing.* L. N. N. l. 1. c. 6 § 17.

BUT though a Law does ſtrictly include *all* the *Subjects* of the Legiſlator who are *concern'd* in the Matter of the ſame, and whom the ſame Legiſlator at firſt *intended* not to be exempted: yet ſometimes it happens that particular perſons may be clear'd of any obligation to ſuch Law: and this is call'd *Diſpenſing*. But as he *only* may diſpenſe, in whoſe Power it is to *make* and *abrogate* the Law; * ſo great Care is

* See *Grotius de Jure Belli & Pacis, L. 2. c. 20. Sect. 21. &c.*

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to be taken, leſt by too frequent Diſpenſations, and ſuch as are granted without very weighty Reaſons, the Authority of the Law be ſhaken, and occaſion be given of Envy and Animoſities among Subjects.

X. *Equity.* L. N. N. l. 5. c. 2. § 21.

YET there is a great Difference between *Equity* and *Diſpenſing*: *Equity* being *a Correction of that in which the Law, by reaſon of its General Comprehenſion, was deficient*: or an *apt Interpretation* of the Law, by which it is demonſtrated, that there may be ſome *peculiar* Caſe which is not compriz'd in the *Univerſal Law*, becauſe if it were, ſome Abſurdity would follow. For it being impoſſible that *all Caſes*, by Reaſon of their infinite *Variety*, ſhould be either foreſeen or explicitly provided for; therefore the *Judges*, whoſe Office it is to apply the *general* Rules of the Laws to *ſpecial* Caſes, ought to except ſuch from the Influence of them, * as the *Lawgiver himſelf* would have excepted if he were *preſent*, or had *foreſeen* ſuch Caſes.

XI. *Actions allowable, good and bad* L. N. N. l. 1. c. 7. § 1.

NOW the Actions of Men obtain certain Qualities and Denominations from their relation to and agreement with the Law of Morality. And all thoſe Actions, concerning which the Law has determin'd nothing on either ſide, are call'd *allowable*, [indifferent] or *permitted*. Here we may obſerve, that in Civil Life, where it is impoſſible to come to perfect Exactneſs in all points, even † thoſe things are ſaid

* See *Grotius de Jure Belli & Pacis*, L. 2. c. 20. *Sect.* 26, 27.

† See *Grotius de Jure Belli & Pacis*, *Lib.* 3. *cap.* 4. § 2.

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to be *allowable*, upon which the Law has not aſſign'd ſome *Puniſhment*, though they are in themſelves repugnant to *Natural Honeſty*. We call thoſe Actions which are *conſonant* to the Law *good*, and thoſe that are *contrary* to it *bad:* But that any Action ſhould be *good*, 'tis requiſite, that it be exactly agreeable in every * point to the Law; whereas it may be *evil* if it be deficient in one Point only.

XII. *Juſtice of Perſons.* L. N. N. l. 1. c. 7. § 6.

As for *Juſtice*, it is ſometimes the Attribute of *Actions*, ſometimes of *Perſons*. When it is attributed to *Perſons*, 'tis uſually defin'd to be, A conſtant and perpetual *Deſire* of giving every one their own. For he is called a *juſt* Man, who is delighted in doing righteous Things, who ſtudies Juſtice, and in all his Actions endeavours to do that which is right. On the other ſide, the *unjuſt* Man is he that neglects the giving every Man his own, or, if he does,

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* The Points here ſpoken of mean the *Quality*, or the *Intention of the Agent*; *the Object*, *the End* purſued thereby, and other like Circumſtances of the Action. Thus, though an Action may in every reſpect anſwer the Direction of the Law, it may be nevertheleſs charged on the Doer as a bad Action, eſpecially in the Sight of God, not only when it was done upon an ill Principle with a vitious Intention, but alſo when it was done through Ignorance, or on ſome other Motive different from what the Law preſcribes. I ſay it may be accounted a bad Action *in the Sight of God*; for the outward Obedience of the Laws ſufficiently anſwering the Ends of Civil Society, which is the Aim only of Politick Legiſlators, they never concern themſelves with the Intention of the Agent, whether it be juſt or unjuſt, provided the External Act has nothing in it but what is conformable to the Law. *See L. N. N. L.* I. *Cap.* VII. § 3, 4 *and Lib.* I. *Cap.* VIII. § 2, 3.

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'tis not becauſe 'tis due, but from expectation of Advantage to himſelf. So that a *juſt Man* may ſometimes do unjuſt Things, and an *unjuſt Man* that which is juſt. But the *Juſt* does that which is right, becauſe he is ſo *commanded* by the Law; and never commits any unjuſt Acts but only through *Infirmity*; whereas the *wicked Man* does a juſt Thing for fear of the *Puniſhment* which is the Sanction of the Command, but ſuch unjuſt Acts as he commits proceed from the *Naughtineſs* of his *Heart.*

XIII. *Of Actions.* L. N. N. l. 1. c. 7. § 7.

BUT the *Juſtice of Actions* not only conſiſts in their due Conformity to Law, but it includes in it likewiſe a right Application of them to thoſe Perſons to whom the Action is perform'd: So that we apprehend that *Action* to be *juſt*, which, with full Deſign and Intention, is apply'd to the Perſon to whom it is due. Herein therefore the *Juſtice* of Actions differs from their *Goodneſs* chiefly, that the latter ſimply denotes an Agreement with the Law; whereas *Juſtice* alſo includes the Regard they have to thoſe * *Perſons* upon whom

* Good Actions might have been more properly diſtinguiſhed with reſpect to the three Objects they may have; which are, *GOD*, *our Neighbour*, and *our ſelves*. (ſee § 13. of the following Chapter.) Such good Actions, as have GOD for their Object, are comprehended under the general Name of *PIETY*. Such good Actions as have for their Object *other Men*, are ſignify'd by the Name of *JUSTICE*. And thoſe good Actions which have only a direct reſpect to *our ſelves*, may be contain'd in the Term *Moderation*, or *TEMPERANCE*. This Diviſion of good Actions being the moſt Simple and Natural one, is alſo the moſt Ancient one. *See L. N. N. Lib.* II. *Cap.* III. § 24.

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they are exerciſed. Upon which Account Juſtice is call'd a *Relative Virtue.*

XIV. *Diviſion of Juſtice.* L. N. N. l. 1. c. 7. § 8.

MEN do not generally agree about the Diviſion of *Juſtice.* The moſt receiv'd Diſtinction is, into *Univerſal* and *Particular.* The firſt is, when *every Duty* is practiſed and *all right* done to others, * even that which could not have been extorted by Force, or by the Rigor of Law. The latter is, when *that Juſtice* only is done a Man, which in his own right he could have *demanded*; and this is wont to be again divided into † *Diſtributive* and *Commutative*

* The Duties here meant, by *ſuch as could not have been extorted by Force or Law,* are ſuch as are not abſolutely neceſſary for the Preſervation of Mankind, and for the Support of Human Society in general, although they ſerve to embelliſh it, and render it more commodious. Such are the Duties of *Compaſſion, Liberality, Beneficence, Gratitude, Hoſpitality,* and in one word all that is contain'd under that comprehenſive Name of *Charity,* or *Humanity,* as it is oppos'd to rigorous *Juſtice* properly ſo call'd, the Duties of which, generally ſpeaking, have their Foundation in Agreement. I ſay *generally ſpeaking*; for tho' there be no Agreement made, we lie under an indiſpenſible Obligation to do wrong to no one, to make good the Damage any one has ſuſtain'd by us, to look upon each other as Equals by Nature, *&c.* But here we ought to obſerve, that in caſe of extream Neceſſity, the *Imperfect Right* that others have to theſe Duties of Charity from us, becomes a *Perfect Right*; ſo that Men may by force be obliged to the performance of theſe Duties at ſuch a time, tho' on all other Occaſions the Performance of them muſt be left to every Man's Conſcience and Honour. *See L. N. N. lib. 1. cap. 7. § 7. lib. 3. cap. 4. § 6.*

† This Diviſion is not compleat, becauſe it comprehends no other Duties but what Men are oblig'd to the performance of towards others, by virtue of an Engagement

tive. The *Diſtributive* takes place in Contracts made between Partners in Fellowſhip, concerning fair Partition of Loſs and Gain according to a rate. † The *Commutative* is moſtly in Bargains made upon even hand about Things and Doings relating to Traffick and Dealing.

XV. *Injuſtice what.* *L. N. N.* l. 1. c. 7. § 14.

KNOWING thus, what *Juſtice* is, 'tis eaſie to collect what is *Injuſtice.* Where it is to be obſerv'd, that ſuch an unjuſt Action is call'd *Wrong-doing*, which is premeditately undertaken, and by which a Violence is done upon ſomewhat which of abſolute Right was another Man's due, or, which by like Right he one way or other ſtood poſſeſs'd of. And this Wrong may be done after a threefold Manner: 1. If that be deny'd to another which in his own right he might demand (not accounting that which from Courteſie or the like Virtue may be another's due): Or, 2. If that be taken away from another, of which by the ſame right, then valid againſt the Invader, he was

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ment enter'd into to that purpoſe; but there are Duties that our Neighbour may in ſtrict juſtice demand at our hands, independently on all ſuch Engagement or Agreement. *See the preceeding Note.* I ſhould rather approve of Mr. *Budæus*'s Diviſion of this *Particular*, or *Strict Juſtice* (*Elem. Pract. Phil. par.* II. *Cap.* II. § 46.) into Juſtice as it is exerciſed between *Equals and Equals*, and as it is exerciſed between *Superiors and Inferiors.* The Former of theſe is ſubdivided into as many different Sorts as there are Duties, which one Man may demand in ſtrictneſs the performance of from every other Man, conſider'd as ſuch, and one Citizen from every other Member of the ſame Body. The Latter of theſe comprehends as many different Sorts as there are kinds of Societies wherein ſome command and others obey.

† See *Grotius de Jure Belli & Pacis, l.* 1. *c.* 1. § 8.

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in full poſſeſſion: Or, 3. If any Damage be done to another, which we had not Authority to do to him. Beſide which, that a Man may be charged with *Injuſtice*, it is requiſite that there be a naughty *Mind* and an evil *Deſign* in him that acts it. For if there be nothing of theſe in it, then 'tis only call'd *Misfortune*, or an *Error*; and that is ſo much ſlighter or more grievous, as the Sloth and Negligence which occaſion'd it was greater or leſs.

XVI. *Laws diſtinguiſht. Natural and Poſitive* L. N. N. l. 1. c. 6. § 18.

LAWS, with reſpect to their Authors, are diſtinguiſhed into *Divine* and *Humane*; *that* proceeds from *God*, and *this* from *Men*. But if Laws be conſidered, as they have a neceſſary and univerſal Congruity with Mankind, they are then diſtinguiſht into *Natural* and *Poſitive*. * *Natural Law is that which is ſo agreeable with the* rational *and* ſociable *Nature of Man, that* honeſt *and* peaceable Society *could not be kept up amongſt Mankind without it*, Hence it is, that *this* may be ſought out, and the knowledge of it acquired by the light of that *Reaſon*, which is born with every Man, and by a conſideration of *Human Nature* in general. *Poſitive Law* is *that which takes not its riſe from the common condition of* Human Nature, *but only from the good pleaſure of the* Legiſlator: This likewiſe ought to have its Foundation in *Reaſon*, and its End ought to be ſome *Advantage* to thoſe Men, or that Society, for which it is deſigned. Now the Law *Divine*, is either *Natural* or *Poſitive*; but all *Human Laws*, ſtrictly taken, are *Poſitive*.

* See *Grotius de Jure Belli & Pacis, Lib.* I. *Cap.* I. § 10.

CHAP. III.

Of the Law of Nature in general.

I. *Law Natural obvious.* L. N. N. l. 2. c. 3.

THAT Man, who has throughly examined the *Nature* and *Diſpoſition* of Mankind, may plainly underſtand what the *Law Natural* is, the *Neceſſity* thereof, and which are the *Precepts* it propoſes and enjoyns to Mankind. For, as it much conduces to him who would know exactly the *Polity* of any *Community*, that he firſt well underſtand the *Condition* thereof, and the *Manners* and *Humours* of the Members who conſtitute it: So to him who has well ſtudied the common *Nature* and *Condition* of *Man*, it will be eaſie to diſcover thoſe *Laws* which are neceſſary for the Safety and common Benefit of Mankind.

II. *Self Preſervation.*

THIS then Man has in common with all the *Animals*, who have a Senſe of their own Beings; that he accounts nothing dearer than *Himſelf*; that he ſtudies all manner of ways *his own Preſervation*; and that he endeavours to *procure* to himſelf ſuch things as ſeem *good* for him, and to *avoid* and *keep off* thoſe that are *miſchievous*. And this Deſire of *Self-Preſervation* regularly is ſo ſtrong, that all our other *Appetites and Paſſions* give way to it. So that whenſoever an *Attempt* is made upon the Life of any man, though he eſcape the danger threatned, yet he uſually reſents it ſo, as to retain a *Hatred* ſtill, and a deſire of *Revenge* on the Aggreſſor.

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III. *Society absolutely neceſſary.* L. N. N. l. 2. c. 1. § 8.

But in one particular, *Man* ſeems to be ſet in a *worſe* condition than that of *Brutes*, that hardly any other Animal comes into the world in ſo great *weakneſs*; ſo that 'twould be a kind of Miracle, if any man ſhould arrive at a mature Age, without the *aid* of ſome body *elſe*. For even now, after ſo many helps found out for the *Neceſſities* of *Human Life*; yet a many Years *careful Study* is required before a Man ſhall be able of himſelf to get *Food* and *Raiment*. * Let us ſuppoſe a Man come to his full Strengrh without any *overſight* or *inſtruction* from *other* Men; ſuppoſe him to have no manner of *Knowledge* but what ſprings of it ſelf from his *own natural Wit*; and thus to be placed in ſome *Solitude*, deſtitute of any *Help* or *Society* of all Mankind beſide. Certainly a more miſerable Creature cannot be imagined. He is no better than *dumb*, *naked*, and has nothing left him but *Herbs* and *Roots* to pluck, and the *wild Fruits* to gather; to quench his thirſt at the next *Spring*, *River*, or *Ditch*; and to ſhelter himſelf from the Injuries of the Weather, by creeping into ſome *Cave*, or covering himſelf after any ſort with *Moſs* or *Graſs*; to paſs away his tedious life in *Idleneſs*; to ſtart at every Noiſe, and be afraid at the ſight of any *other* Animal; in a Word, at laſt to periſh either by *Hunger*, or *Cold*, or ſome

* *L. N. N. l.* II. *c.* 1. § 8. *c.* 2. § 2. *Diſſert. Acad. ult. p.* 458. *Eriſ. Scandic. in Apol. p.* 20. *ſeq Specim. Controv. c.* 3. *p.* 217. *c.* 4. § 161. *p.* 258. *Spicileg. Controv. c.* 3. § 1. *p.* 379. *Jul. Rondin. Diſſert. Epiſt.* § 1. *ſeq. p.* 396, *Comment. ſuper inœnuſto Ven. Lipſienſ. pull. p.* 11, 16, 36, 44, 46, 52, 54.

wild *Beaſt*. It muſt then follow, that whatſoever Advantages accompany Human Life, are all owing to that *mutual Help* Men afford one another. So that, next to *Divine Providence*, there is nothing in the world more *beneficial* to Mankind than *Men themſelves*.

IV. *Men to Men inclinable to do hurt.* L. N. N. l. 2. c. 1. § 6 l. 7. c. 1. § 4.

And yet, as *uſeful* as this Creature is, or may be, to others of its kind, it has many Faults, and is capable of being *equally noxious*; which renders mutual Society between Man and Man not a little dangerous, and makes *great Caution* neceſſary to be uſed therein, leſt Miſ*chief* accrue from it inſtead of *Good*. In the firſt place, a ſtronger *Proclivity* to injure another is obſerv'd to be generally in *Man*, than in any of the *Brutes*; for they ſeldom grow outragious, but through *Hunger* or *Luſt*, both which Appetites are ſatisfi'd without much Pains; and that done, they are not apt to grow furious, or to hurt their Fellow-Creatures, without ſome *Provocation*. Whereas Man is an Animal always *prone* to *Luſt*, by which he is much more frequently inſtigated, than ſeems to be neceſſary to the Conſervation of his Kind. His *Stomach* alſo is not only to be *ſatisfied*, but to be *pleaſed*; and it often deſires more than Nature can well digeſt. As for *Raiment*, Nature has taken Care of the *reſt* of the Creatures that they don't *want* any: But *Men* require not only ſuch as will anſwer their *Neceſſity*, but their *Pride* and *Oſtentation*. Beſide theſe, there are many *Paſſions* and *Appetites* unknown to the *Brutes*, which are yet to be found in *Mankind*; as, an unreaſonable *Deſire* of poſſeſſing much *more* than is *neceſſary*, an earneſt purſuit after *Glory* and *Pre-eminence*; *Envy*, *Emulation*, and

Out-

Outvyings of Wit. A Proof hereof is, that moſt of the Wars with which *Mankind* is harraſs'd, are rais'd for Cauſes altogether unknown to the *Brutes*. Now all theſe are able to provoke *Men* to hurt one another, and they frequently do ſo. Hereto may be added the great *Arrogance* that is in many Men, and *Deſire* of *inſulting* over others, which cannot but exaſperate even thoſe who are naturally meek enough; and from a Care of preſerving themſelves and their Liberty, excite them to make Reſiſtance. Sometimes alſo *Want* ſets Men together by the Ears, or becauſe that Store of Neceſſaries which they have at *preſent* ſeems not *ſufficient* for their *Needs* or *Appetites*.

V. *And very capable of it.*

MOREOVER, Men are more *able* to do one another Harm than *Brutes* are. For tho' they don't look formidable with *Teeth*, *Claws*, or *Horns*, as many of *them* do; yet the *Activity* of their *Hands* renders them very effectual Inſtruments of Miſchief; and then the Quickneſs of their *Wit* gives them *Craft*, and a Capacity of attempting that by Treachery which cannot be done by open Force. So that 'tis very *eaſie* for one Man to bring upon another the *greateſt* of all *Natural Evils*, to wit, *Death* itſelf.

VI. *And likely ſo to do.* L. N. N. l. 2. c. 1. § 7.

BESIDE all this, it is to be conſider'd, that among *Men* there is a vaſt *Diverſity* of *Diſpoſitions*, which is not to be found among *Brutes*; for among Brutes, all of the ſame Kind have the *like Inclinations*, and are led by the *ſame* inward *Motions* and *Appetites*: Whereas among *Men*, there are ſo many *Minds* as there are *Heads*, and every one has his *ſingular* Opinion; nor are they all acted with *ſimple* and *uniform* Deſires, but with ſuch as are *manifold* and *variouſly mixt* together.

toge her. Nay, *one* and the *ſame* Man ſhall be often ſeen to *differ* from *himſelf*, and to *deſire* that at *one* Time which at *another* he extremely *abhorred*. Nor is the Variety leſs diſcernable, which is now to be found in the almoſt *infinite Ways* of living, of directing our Studies, or Courſe of Life, and our Methods of making uſe of our Wits. Now, that by Occaſion hereof Men may not daſh againſt one another, there is need of wiſe *Limitations* and careful *Management*.

VII. *The Sum of the foregoing Paragraphs.* So then Man is an Animal very deſirous of his own *Preſervation*; of *himſelf* liable to many *Wants*; *unable* to Support himſelf without the Help of *other* of his Kind; and yet wonderfully fit in *Society* to promote a *common Good*: But then he is *malicious*, *inſolent*, and eaſily *provok'd*, and not leſs *prone* to do Miſchief to his Fellow than he is *capable* of effecting it. Whence this muſt be inferr'd, that in order to his Preſervation, 'tis abſolutely neceſſary, that he be *ſociable*, that is, that he *join* with thoſe of his Kind, and that he ſo *behave* himſelf towards them, that they may have no juſtifiable Cauſe to do him *Harm*, but rather to *promote* and *ſecure* to him all his Intereſts.

VIII. *Law Natural defin'd.* THE Rules then of this Fellowſhip, which are the Laws of *Human Society*, whereby Men are directed how to render themſelves uſeful Members thereof, and without which it falls to pieces, are called the *Laws of Nature*.

IX. *The Means deſign'd* FROM What has been ſaid, it appears, that this is a *fundamental Law of Nature*, That EVERY MAN OUGHT, AS MUCH AS IN HIM LIES, TO PRESERVE AND PROMOTE SOCIETY:

TY: That is, the *Welfare of Mankind.* * And since he that deſigns the *End*, cannot but be ſuppoſed to deſign thoſe *Means* without which the *End* cannot be obtain'd, it follows that all ſuch Actions as tend generally and are abſolutely neceſſary to the Preſervation of this *Society*, are *commanded* by the *Law of Nature*; as, on the contrary, thoſe that diſturb and diſſolve it are forbidden by the ſame. All other Precepts are to be accounted only *Subſumptions*, or *Conſequences* upon this Univerſal Law, the Evidence whereof is made out by that Natural Light which is engrafted in Mankind.

where the End is ſo. L. N. N. l. 2. c. 3. § 15.

X. *A God and Providence.* L. N. N. l. 2. c. 3. § 19.

Now though theſe *Rules* do plainly contain in themſelves that which is for the general *Good*; yet that the ſame may obtain the Force of *Laws*, it muſt neceſſarily be preſuppos'd, that there is a GOD, who governs all Things by his Providence, and that He has enjoyn'd us Mortals, to obſerve theſe *Dictates* of our Reaſon as *Laws*, promulged by him to us by the powerful Mediation of that Light which is born with us. Otherwiſe we might perhaps pay ſome obedience to them in contemplation of their *Utility*, ſo as we obſerve the Directions of Phyſicians in regard to our Health, † but not as *Laws*, to

* See *Grotius de Jure Belli & Pacis in Prolegomenis paſſim.* L. N. N. *l.* 2. *c.* 3. § 14. *ſeq. Element. Juriſpr. univerſal. l.* 2. *obſerv* 14. *Eriſ. Scandic. Apol. p.* 46, 75. *Specim. Controverſ. c.* 4. *p.* 231. *ſequ. Spicileg. Jur. Nat. c.* 1. § 14. *p.* 348. *ſeq. c.* 2. § 8. *p.* 366. *c.* 3. § 13. *p.* 389. *ſeq. Venet. Lipſienſ. pull. p* 11. *& paſſim.*

† *Grotius de Jure Belli & Pacis, Lib.* 1. *Cap.* 1. § 10.

the Conſtitution of which a *Superior* is neceſſary to be ſuppoſed, and *that* ſuch a one as has actually undertaken the Government of the other.

XI. *God the Author of the Law of Nature.* L. N. N. 1. 2. c. 3. § 20.

But, that God is the Author of the *Law of Nature*, is thus demonſtrated (conſidering Mankind only in its *preſent* State, without enquiring whether the *firſt* Condition of us Mortals was *different* from this, nor *how* the Change was wrought.) Whereas our Nature is ſo framed, that Mankind cannot be preſerv'd without a *ſociable Life*, and whereas it is plain that the *Mind of Man* is capable of all thoſe Notions which are *ſubſervient* to this purpoſe; and it is alſo manifeſt, that Men not only, like the other Creatures, owe their *Original* to God, but that He *governs* them, (let their Condition be as it will) by the Wiſdom of his *Providence*. Hence it follows, that it muſt be ſuppoſed to be the *Will of God*, that Man ſhould make uſe of thoſe Faculties with which he is peculiarly endow'd beyond the Brutes, to the *Preſervation* of his own Nature: and conſequently, that the Life of Man ſhould be different from the lawleſs Life of the *Irrational Creatures*. And ſince this cannot otherwiſe be atchiev'd, but by an Obſervance of the *Law Natural*, it muſt be underſtood, that there is from God an obligation laid upon Man to pay Obedience hereto, as a Means not *invented* by the Wit, or *impoſed* by the Will of Men, nor capable of being *changed* by their Humours and Inclinations; but *expreſsly* ordain'd by God himſelf in order to the *accompliſhing* this End. For he that obliges us to purſue ſuch an *End*, muſt be thought to oblige us to make uſe of thoſe

thoſe *Means* which are neceſſary to the attainment thereof. And that the *Social Life* is poſitively enjoyn'd by God upon *Men*, this is a Proof, that in no other *Animal* is to be found any Senſe of *Religion* or Fear of a *Deity*, which ſeems not ſo much as to fall within the Underſtanding of the ungovernable Brute; and yet it has the power to excite in the minds of *Men*, not altogether profligate, the tendereſt Senſe; by which they are convinced, that by ſinning againſt this *Law Natural*, they offend him who is Lord of the Soul of Man, and who is to be fear'd, even where we are ſecure of any Puniſhment from our Fellow-Creatures.

XII. *This Law how written in Man's Heart.*

THOUGH it be uſually ſaid, that we have the Knowledge of this Law from *Nature* it ſelf, yet this is not ſo to be taken, as if there were implanted in the Minds of Men juſt *new born*, plain and diſtinct Notions concerning what is to be *done* or *avoided*. But Nature is ſaid thus to teach us, * partly becauſe the Knowledge of this Law may be attain'd by the help of the *Light* of *Reaſon*; and partly becauſe the general and moſt uſeful Points thereof are ſo *plain* and *clear*, that they at firſt ſight force the Aſſent, and get ſuch root in the minds of Men, that nothing can eradicate them afterwards; let wicked Men take never ſo much pains to blunt the edge and ſtupifie themſelves againſt the Stings of their *Conſciences*. And in this Senſe we find in Holy Scripture, that this Law is ſaid to be *written in the hearts of Men*. So that having

Rom. ii. 15.

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* *L. N. N. lib* 2. *c.* 3. § 13. *ſeq. Eriſ. Scandic. Apol.* § 24 *p.* 40. *Epiſt. ad Amicos.*

from

from our Childhood had a Senſe hereof inſtill'd into us, together with other Learning in the uſual Methods of Education, and yet not being able to remember the *punctual time* when firſt they took hold of our Underſtanding and poſſeſs'd our Minds; we can have no other opinion of our knowledge of this Law; but that it was *connate* to our Beings, or born *together* and at the *ſame time* with our ſelves. The Caſe being the ſame with every Man in learning his *Mother Tongue.*

XIII. *Diviſion of Natural Duties.* L. N. N. 1. 2. c. 3. § 24.

THOSE *Duties*, which from the Law of Nature are incumbent upon Man, ſeem moſt aptly to be *divided* according to the *Objects* about which they are converſant. With regard to which they are ranged under three principal Heads; the *firſt* of which gives us Directions how by the ſingle Dictates of right Reaſon Man ought to behave himſelf towards *God*; the *ſecond* contains our Duty towards *our ſelves*; and the *third* that towards *other Men.* But though thoſe Precepts of the Law Natural, which have a relation to *othor Men*, may primarily and directly be derived from that *Sociality*, which we have laid down as a Foundation; yet even the Duties alſo of Man towards *God* may be * indirectly deduc'd from

* But theſe Duties, as well as thoſe which regard our ſelves, have another more immediate and direct Foundation, which makes part of the general Principles of the Law of Nature. For it is not neceſſary that all thoſe Duties, the Neceſſity and Reaſonableneſs of which may be collected from the Light of Reaſon only, ſhould be deduced from this one Fundamental Maxim. It may more juſtly be ſaid, that there are three grand Principles of

from thence, upon this Account, that the ſtrongeſt Obligation to mutual Duties between Man and Man ariſes from *Religion* and a Fear of the *Deity*; ſo as that Man could not become a *ſociable* Creature if he were not imbu'd with *Religion*; and becauſe *Reaſon* alone can go no farther in *Religion* than as it is uſeful to promote the common Tranquillity and Sociality or reciprocal Union in this Life: For ſo far forth as Religion procures the Salvation of Souls, it proceeds from peculiar Divine Revelation. But the Duties a man owes to *Himſelf* ariſe jointly from *Religion*, and from the Neceſſity of *Society*. So that no Man is ſo Lord of himſelf, but that there are many things relating to *himſelf*, which are not to be diſpoſed altogether according to his Will; partly becauſe of the Obligation he lies under of being a religious Adorer of the *Deity*, and partly that he may keep himſelf an uſeful and beneficial Member of *Society*.

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of Natural Right, that is, *RELIGION*, which comprehends all the Duties of Man towards God; the *LOVE OF OUR SELVES*, which contains all thoſe Duties which we are bound to do, with reſpect only and directly to our ſelves; and *SOCIABILITY*, from whence reſults all that is due from us to our Neighbour. Theſe are fruitful Principles, which, tho' they have a great Affinity and Reſpect to each other, are yet very different at the bottom, and ought wiſely to be conſidered and regarded, ſo that an equal and juſt Balance may, as much as poſſible, be preſerv'd between them. See *L. N. N. lib. 2. cap. 3. § 15.*

CHAP.

CHAP. IV.

Of the Duty of Man towards GOD, *or, concerning Natural Religion.*

I. *Natural Religion, its Parts.*

THE Duty of Man towards GOD, ſo far as can be diſcover'd by Natural Reaſon, is comprehended in theſe two; that we have *true* Notions concerning him, or *know* him aright; and then that we conform all our Actions to his Will, or *obey* him as we ought. And hence Natural Religion conſiſts of two ſorts of Propoſitions, to wit, * *Theoretical* or Speculative, and *Practical* or Active.

II. *That God is.* L. N. N. l. 2. c. 4. § 3.

AMONGST thoſe *Notions* that every Man ought to have of GOD, the *firſt* of all is, that he firmly believe his *Exiſtence*, that is, that there *is* indeed ſome *ſupreme* and *firſt Being*, upon whom this Univerſe depends. And this has been moſt plainly demonſtrated by learned and wiſe Men from the *Subordination* of *Cauſes* to one another, which muſt at laſt be found to have their Original in ſomewhat that was before them all; from the neceſſity of having a *firſt Mover*; from the Conſideration of this great *Machin*, the World, and from the like Arguments. Which if any Man denies him-

* See Monſ. *Le Clerc*'s *Pneumatologia*, § 3. and Monſ. *Budæus*'s Diſcourſe, *de Pietate Philoſophica*, being the fourth Diſcourſe in his *Selecta Jura Naturæ & Gentium.*

ſelf

ſelf to be able to *comprehend*, he is not therefore to be excus'd for his Atheiſm. For all Mankind having been perpetually, as it were, poſſeſt of this Perſuaſion, that Man who undertakes to oppoſe it, ought not only ſolidly to *confute* all thoſe Arguments that are brought to *prove* a God, but ſhould advance *Reaſons* for his own Aſſertion, which may be *more plauſible* than thoſe. And ſince by this Belief of the *Deity* the Weal of Mankind may be ſuppoſed to have been *hitherto* preſerv'd, he ought to ſhew that Atheiſm would *better* anſwer that End than ſober Religion and the Worſhip of God. Now ſeeing this can by no means be done, the Wickedneſs of thoſe Men who attempt any way to eradicate this Perſuaſion out of the Minds of Men, is to be above all things abominated, and reſtrain'd by the ſevereſt Puniſhments.

III. *God the Creator of the World.* L. N. N. l. 3. c. 4. § 4.

THE Second is, that *God is the Creator of this Univerſe.* For it being manifeſt from Reaſon, that none of theſe Things could exiſt of *themſelves*, it is abſolutely neceſſary that they ſhould have ſome ſupreme *Cauſe*; which *Cauſe* is the very ſame that we call GOD,

AND hence it follows, that thoſe Men are cheated, who every now and then are putting upon us **Nature**, forſooth, as the original Cauſe of all Things and Effects. For, if by that Word they mean that *Energy* and *Power of Acting* which we find in every Thing, this is ſo far from being of any force to prove there is *no God*, that it proves him to be the *Author* of *Nature it ſelf*. But if by *Nature* they would have us underſtand the *Supreme Cauſe* of all Things, this is only out of a profane Nicety

to

to avoid the receiv'd and plain Appellation of GOD.

THOSE alſo are in a great Error, who believe that any thing can be GOD, which is the Object of our *Senſes*, and particularly the *Stars*, among the reſt. For the *Subſtance* of theſe argues them all to derive their Beings from ſomewhat elſe, and not to be the *firſt* Things in Nature.

NOR do they think leſs unworthily of *God*, who call him the * *Soul of the World.* For the Soul of the World, let them conceive of it as they pleaſe, muſt ſignifie a *Part* of the World; and how can a *Part* of a Thing be the *Cauſe* of it, that is, be ſomething *before* it ſelf? But if by the *Soul* of the World, they mean that *firſt* and *inviſible Being*, from which all Things receive their Vigour, Life, and Motion, they only obtrude upon us an *obſcure* and *figurative* Expreſſion for one that is *plain* and *obvious*. From hence alſo it appears, that the *World* did not exiſt from *all Eternity*; this being contrary to the Nature of that which has a *Cauſe*. And he that aſſerts, that the *World is Eternal*, denies that it had any *Cauſe* of its being, and conſequently denies *God* himſelf.

IV. *God governs the World.*

THE Third is, that GOD *governs the whole World*, and particularly *Mankind*; which plainly appears from the admirable and conſtant *Order* which is to be ſeen in this Univerſe; and 'tis to the ſame *moral* Purpoſe whether a

* See the Continuation of *various Thoughts about Comets, &c.* by Mr. *Bayle.*

Man

Man deny that GOD *is*, or that he *rules* and *regards the Affairs of Men*; ſince either of them deſtroy all Manner of Religion. For let him be never ſo *excellent* in himſelf, 'tis in vain to fear or worſhip him, if he be altogerher regardleſs of us, and neither *will* nor *can* do us either Good or Hurt.

V. *God infinitely perfect.*

THE Fourth is, that *no Attribute can belong to God, which implies any manner of Imperfection.* For it would be abſurd, (He being the *Cauſe* and *Source* of all Things) for any Creature of his to think it ſelf able to form a notion of any *Perfection*, of which he is not fully poſſeſt. Nay, His *Perfection* infinitely ſurmounting the Capacity of ſo mean a Creature, it is moſt reaſonable to expreſs the ſame in *negative* rather than in *poſitive* Terms. Hence nothing is to be attributed to God that is *finite* or *determinate*; becauſe what is *finite* has always ſomewhat that is *greater* than it ſelf; And whatſoever is *determinate*, or ſubject to *Figure* and *Form*, muſt ſuppoſe *Bounds* and *Circumſcription:* Neither can He be ſaid to be *diſtinctly* and *fully comprehended* or conceiv'd in our Imagination, or by any Faculty of our Souls; becauſe whatſoever we can comprehend fully and diſtinctly in our Minds, muſt be *Finite*. And yet, when we pronounce God to be *Infinite*, we are not to think we have a full *Notion* of Him; for by the word *Infinite* we denote nothing in the Thing it ſelf; but only declare the Impotence of our Underſtandings, and we do, as it were, ſay, that we are not able to comprehend the Greatneſs of his Eſſence. Hence alſo it is, that we cannot rightly ſay of God that he has any *Parts*,

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as neither that *He* is *All* any thing; for theſe are Attributes of things *finite*; nor that he is contain'd in any *Place*, for that denores Limits and Bounds; nor that He *moves* or *reſts*, for both thoſe ſuppoſe Him to be in a place: So neither can any thing be properly attributed to God which intimates *Grief*, or any *Paſſion*, ſuch as *Anger*, *Repentance*, *Mercy*. I ſay *properly*; becauſe when the inſpir'd Writers ſometimes uſe ſuch Expreſſions, ſpeaking of the Almighty, they are not to be underſtood in a proper Senſe, but as accommodating their Language to the common Apprehenſions and Capacities of Men; ſo that we are not to underſtand hereby that GOD receives the ſame Impreſſions from external Objects that Man receives, but only by way of ſimilitude, as to the *Event* or *Effect*; thus God is ſaid to be angry with, and to be offended at Sinners, not that ſuch Paſſions or Affections can poſſibly be in the Divine Nature, but becauſe he will not ſuffer thoſe who break his Laws to go unpuniſh'd. Nor may we ſay of Him ought that denotes the *Want* or Abſence of any Good, as *Appetite*, *Hope*, *Concupiſcence*, *Deſire* of any thing; for theſe imply *Indigence* and conſequently *Imperfection*; it not being ſuppoſable that one ſhould deſire, hope, or crave any thing of which he does not ſtand in ſome need. And ſo when *Underſtanding*, *Will*, *Knowledge*, and acts of the Senſes, *Seeing*, *Hearing*, *&c.* are attributed to God, they are to be taken in a much more ſublime Senſe, than we conceive them in our ſelves. For the Will in us is a *rational Deſire*; but *Deſire*, as it is ſaid afore, preſuppoſes the *Want* or *Abſence* of ſomething that

that is agreeable and neceſſary. And *Underſtanding* and *Senſe* imply ſome Operation upon the Faculties of Man, wrought by exterior Objects upon the Organs of his Body and the Powers of his Soul; which being Signs of a Power *depending* upon ſome other Thing, demonſtrate it not to be *moſt perfect*.

God but One.

LASTLY, it is utterly repugnant to the Divine Perfection to ſay there are *more Gods* than *one*; for, beſide that the admirable Harmony of the World argues it to have but *one* Governour, GOD would not be *infinite*, if there were more Gods of equal Power with himſelf, and not depending upon Him; for it involves a Contradiction to ſay, There are *many Infinites*. Upon the whole then, 'tis moſt agreeable to Reaſon, when we attempt to expreſs the *Attributes* of God, either to make uſe of Words of a *Negative* ſignification, as Infinite, Incomprehenſible, Immenſe, Eternal, *i. e.* which had no Beginning nor ſhall have End; or *Superlative*, as moſt Excellent, moſt Powerful, moſt Mighty, moſt Wiſe, *&c.* or *Indefinite*, as Good, Juſt, Creator, King, Lord, *&c.* and this in ſuch a Senſe as we would not think our ſelves to expreſs *What* he is, but only in ſome ſort to declare our *Admiration* of Him, and profeſs our *Obedience* to Him; which is a token of an humble Soul, and of a Mind paying all the Veneration it is capable of.

VI.

Internal Worſhip of God.

THE Propoſitions of *Practical* Natural Religion are partly ſuch as concern the *Internal*, and partly the *External Worſhip of God*. The *Internal* Worſhip of God conſiſts in *honouring* Him. Now *Honour* is a high Opinion of another's *Power* conjoyn'd with *Goodneſs*: And

the Mind of Man is obliged, from a Conſideration of this his Power and Goodneſs, to fill it ſelf with all that Reverence towards him, of which its Nature is ſuſceptible. Hence it is, that it is our Duty to *love* him, as the Author and Beſtower of all Manner of Good; to *hope* in him, as from whom only all our Happineſs for the future does depend; to *acquieſce* in his Will, he doing all things for the beſt, and giving us what is moſt expedient for us; to *fear* him, as being moſt powerful, and the offending whom renders us liable to the greateſt Evil; Laſtly, in all things moſt humbly to *obey* him, as our Creator, our Lord, and our beſt and greateſt Ruler.

VII. *External Worſhip of God.*

THE *External Worſhip* of God is chiefly ſhewn in theſe Inſtances:

1. WE muſt *render Thanks to God for all* thoſe manifold *Bleſſings* he has ſo bountifully beſtow'd upon us.

2. WE muſt conform, as far as we poſſibly can, all our Actions to his Will; that is, we muſt *obey all his Commands.*

3. WE muſt *Admire and Adore his infinite Greatneſs.*

4. WE muſt *Offer up to him our Prayers and Supplications*, to obtain from him thoſe Benefits we ſtand in need of, and to be delivered from thoſe Evils we are in fear of. Indeed our Prayers are Proofs of our *Truſt* and *Hope* in Him, and our Hope is a plain Acknowledgment of the Power and Goodneſs of him in whom it is placed.

5. WHEN we find it neceſſary to take an Oath, we muſt *ſwear by no other Name than the Name of God*; and then we muſt *moſt religiouſly*

giouſly obſerve what we have engaged our ſelves to in calling GOD to witneſs; and this we are indiſpenſably obliged to, from the Conſideration of God's infinite Knowledge and his Almighty Power.

6. We muſt *never ſpeak of GOD but with the higheſt Reſpect and utmoſt Reverence.* Such a Behaviour is a Proof of our Fear of God; and Fear is an Acknowledgment of his Power over us, whom we dread. Hence then it follows, that *the Holy Name of GOD is not to be mention'd in our Diſcourſe upon unneceſſary and trifling Occaſions*, ſince this would be great Diſreſpect; That *we ought not to ſwear at all but upon great and ſolemn Occaſions*; for calling God to witneſs upon Matters of ſmall Weight and Moment, is a great Abuſe of his Holy Name. That *we engage not our ſelves in over-nice and curious Enquiries and Diſputes about the Nature of GOD, and the Methods of his Providence:* This would be to magnify and exalt our own Capacities, and vainly to imagine, that the unſearchable Nature and Providence of God could be comprehended within the narrow Limits of our ſhallow Reaſon.

7. *Whatſoever is done for the Sake of GOD, or in Obedience to his Will, ought to be the moſt excellent in its Kind, and done after ſuch a Manner, and with ſuch Circumſtances, as are moſt proper to expreſs the profound Honour and Veneration we have for Him.*

8. We muſt *ſerve and worſhip him, not only in private, but alſo in publick, in the ſight of Men*; for to do any thing in ſecret only, ſeems to hint as if we were aſhamed to act it openly; but Worſhip *publickly* paid, not only gives Teſtimo-

ny of our own Devotion, but excites others by our Example to do the like.

9. And Laſtly, We are to uſe our utmoſt Endeavour to *obſerve the Laws of Nature*; for as it is the greateſt Affront to ſlight the Commands of God, ſo, on the contrary, Obedience to his Laws is more acceptable than any Sacrifice; and we have proved, that the *Law of Nature* is the *Law of God.*

VIII. *Eternal Salvation not acquired by Natural Religion alone.*

And yet, after all, it muſt be confeſt, that the Effects of this *Natural Religion*, nicely conſider'd, and with regard to the *preſent State of Mankind*, are concluded within the Proſpect of *this* Life; but that it is of no Avail towards procuring *eternal Salvation.* For *Human Reaſon*, left alone to it ſelf, knows not that the *Pravity*, which is ſo diſcernable in our Faculties and Inclinations, proceeded from Man's *own Fault*, and that hereby he becomes obnoxious to the *Wrath* of God, and to *eternal Damnation*: So that with the Guidance of *this* only, we are altogether ignorant of the Neceſſity of a *Saviour*, and of his *Office* and *Merit*; as well as of the *Promiſes* made by God to Mankind, and of the ſeveral *other* Matters thereupon depending, by which alone, it is plain from the holy Scriptures, that everlaſting Salvation is procured to mortal Men.

IX. *Religion the firmeſt Bond of Society.*

It may be worth the while, yet a little more diſtinctly to conſider the Benefits which through *Religion* accrue to Mankind; from whence it may appear, that * *It is in truth*

* *L. N. N. lib. 7. cap. 4. § 8. Eriſ. Scand. § 6. p. 7. Epiſt. ad Schetzer. p. 84. Append. p. 108. ſeq. Spicileg. Controv. § 16. p. 350. Exam. Doctrin. § 2. quæſt. 316. Diſcuſſ. Calumn. Beckmann. p. 169.*

the

the utmoſt and firmeſt Bond of Human Society. For in the Natural Liberty, if you take away the *Fear* of a *Divine Power*, any Man who ſhall have confidence in his own *Strength*, may do what Violences he pleaſes to others who are weaker than himſelf, and will account *Honeſty*, *Modeſty*, and *Truth* but as empty Words; nor will he be perſuaded to do that which is right by any Arguments, but from a Senſe of his own *Inability* to act the contrary. Moreover, lay aſide *Religion*, and the *Internal Bonds* of Communities will be always ſlack and feeble; the Fear of a temporal *Puniſhment*, the *Allegiance* ſworn to Superiours, and the *Honour* of obſerving the ſame, together with a *grateful Conſideration* that by the Favour of the ſupreme Government they are defended from the Miſeries attending a *State of Nature*; all theſe, I ſay, will be utterly inſufficient to contain unruly Men within the Bounds of their Duty. For in this caſe that Saying would indeed have place, * *He that values not Death, can never be compell'd*; becauſe to thoſe who fear not *God* nothing can be more formidable than *Death.* He that can once bring himſelf to deſpiſe *this*, may attempt what he pleaſes upon thoſe that are ſet over him; and to tempt him ſo to do, he can hardly want ſome *Cauſe* or *Pretence*; as, either to free himſelf of the Uneaſineſs he ſeems to lie under by being ſubject to another's Command, or that himſelf may enjoy thoſe Advantages which belong to him that poſſeſſes the Government; eſpecially when

* ——— *Cogi qui poteſt, neſcit mori.*
Seneca Hercul. fur. ver. 425.

he may eaſily perſuade himſelf, that his Enterpriſe is juſt, either becauſe He that at preſent ſits at the Helm of Government is guilty of Mal-Adminiſtration, or that himſelf thinks he could manage it by many degrees to better purpoſe. An *Occaſion* too cannot long be wanting for ſuch Attempts, either from the Prince's Want of Circumſpection in the care of his Perſon, (and indeed in ſuch a State of Things * who ſhall guard even the Guards themſelves?) or from a powerful Conſpiracy, or, in time of foreign War, from a Defection to the Enemy. Beſide *private* Men would be very prone to wrong one another; for the Proceedings in *human Courts* of Judicature being govern'd by *Proofs* of Matter of Fact, all thoſe *Wickedneſſes* and *Villanies* which could be *ſecretly* acted and without Witneſſes, if any thing were to be gain'd by them, would be accounted *Dexterities of Wit*, in the practice of which a Man might enjoy ſome Self-ſatisfaction. Again, no Man would be found that would do Works of *Charity* or of *Friendſhip*, except with probable Expectation of Glory or Profit. From whence it would follow, that, ſuppoſing no Puniſhment from above, one Man not being able to place any ſolid Confidence in the Troth of another, they muſt every one always live anxiouſly in a mutual *Fear* and *Jealouſy*, leſt they be cheated or harm'd each by his Neighbour. The *Governours* alſo would have as little Inclination, as

* ——— *Pone ſeram, cohibe, ſed quis cuſtodiet ipſos Cuſtodes?*

Juv. Sat. VI. ver. 346, 347.

the

the *Governed*, to Actions that are *brave* and *honourable*; for thoſe that govern not being obliged by any Tie of Conſcience, would put all Offices, and even Juſtice itſelf to ſale; and in every thing ſeek their own *private Profit* by the Oppreſſion of their Subjects; from whom they being always fearful of a *Rebellion*, they muſt needs know, there can be no ſurer Means to preſerve themſelves, than by rendring them as *heartleſs* and as *weak* as poſſible. The *Subjects* alſo, on the other ſide, ſtanding in fear of the Violences of their Rulers, would always be ſeeking Opportunities to *rebel*, tho' at the ſame time they muſt be mutually diſtruſtful and fearful of each other. The ſame would be the Caſe of *married Perſons*; upon any ſlight Quarrel, they would be ſuſpicious leſt one ſhould make away the other by Poiſon or ſome ſuch *clandeſtine* Way; and the whole Family would be liable to the like Danger. For it being plain, that without *Religion* there could be no *Conſcience*; it would not be eaſy to diſcover ſuch *ſecret Villanies*; they being ſuch as moſtly are brought to light by the inceſſant pricking of the *Conſcience*, and *internal Horrors* breaking forth into outward Indications. From all which it appears, how much it is the Intereſt of Mankind, that all Means be uſed to check the ſpreading of *Atheiſm* in the World; and with what *vain Folly* thoſe Men are poſſeſs'd, who think to get the Reputation of being notable *Politicians*, by being ſeemingly inclin'd to *Looſeneſs* and *Irreligion*.

CHAP. V.

Of the Duty of a Man towards Himſelf.

I. *Man liable to Obligation to Himſelf.*

ALTHOUGH the *Love of himſelf* be ſo deeply fix'd in the Mind of Man, as to put him always under a Sollicitous Care of Himſelf, and upon Endeavours by all means to procure his own Advantage; ſo as, upon Conſideration *hereof*, 'twould ſeem ſuperfluous to find out *Laws* to oblige him to the ſame: * yet in *other* Reſpects it is neceſſary, that he be bound to the Obſervation of ſome certain *Rules* touching *Himſelf.* For, not being born for himſelf alone, but being therefore furniſh'd with ſo many excellent *Endowments*, that he may ſet forth his *Creator*'s Praiſe, and be rendred a fit Member of *Human Society*; it follows hence, that it is his *Duty*, to cultivate and improve thoſe Gifts of his Creator which he finds in himſelf, that they may anſwer the End of their *Donor*; and to contribute

L. N. N. l. 1. c. 4.

* The Duties of every Man, which directly and ſolely reſpect himſelf, have their immediate Foundation in that *LOVE* which every Man by Nature hath *OF HIMSELF*; which was before laid down as one of the grand Principles of Natural Right, and which not only obliges a Man to preſerve himſelf, as far as poſſibly he can, without prejudice to the Laws of Religion or Sociality; but alſo to put himſelf into the beſt Condition he can, and to obtain all the Happineſs of which he is innocently capable. *See L. N. N. Lib.* II. *Cap.* III. § 15.

all

all that lies in his Power to the Benefit of *Human Society*. Thus, though true it is, that the *Ignorance* of any Man is *his own* Shame and *his own* Loſs; yet we accuſe not the Maſter of Injuſtice, who chaſtiſes his Scholar for *Negligence* in not learning thoſe Sciences of which he is capable.

II. *The general Obligation that every one lies under to take care of his Soul.*

And ſince Man conſiſts of two Parts, a *Soul* and a *Body*, whereof the firſt ſupplies the Part of a *Director*, the other that of an *Inſtrument* or *ſubordinate Miniſter*; ſo that our Actions are all performed by the Guidance of the *Mind*, and by the Miniſtration of the *Body*; we are hence obliged to take care of both, but eſpecially the former.

The *Care of the Soul* conſiſts, in general, in the right Formation of the Mind and Heart; that is, not only in framing to our ſelves true and juſt Opinions concerning all thoſe Things to which our Duties bear any reference, and in making a true Judgment of, and ſetting a right Value upon, thoſe Objects which commonly excite our *Appetites*; but alſo in regulating the Diſpoſitions of our Minds; in reducing and conforming them to the Dictates of right Reaſon; in employing our Time and Pains in the Proſecution of honeſt Arts and Sciences; and, in one word, in getting our ſelves poſſeſt of all thoſe Qualities which are neceſſary for us to lead an *honeſt* and a *ſociable* Life.

III. *Particular Duties to which this Care of our Soul obliges us.*

Among all the *Opinions* then, which it highly concerns all Men firmly to *ſettle* in their Minds, the chief are thoſe which relate to ALMIGHTY GOD, as the great Creator and Governour of the Univerſe, ſuch as are repreſented in the foregoing Chapter.

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1. To ſettle in our ſelves right Opinions of Religion. L. N. N. l. 1. c. 4. § 7.

The full Perſuaſion of theſe *great Truths* being not only the principal Ground of *the Whole Duty of Man to God*, but the Foundation of all thoſe Virtues which we are to exerciſe toward our Neighbour, and the true Source of all that Quiet of Conſcience and Tranquillity of Mind, which is one of the greateſt Bleſſings of Life. Since no ſober and conſidering Man can deny theſe Truths, we muſt diligently avoid and utterly reject all thoſe Opinions, which contain in them any thing *contrariant* to Principles ſo important. By which I mean not only *Atheiſm* and *Epicuriſm*, but all other Sentiments which are prejudicial to Human Society, or deſtructive of good Manners; ſuch being incompatible with true Religion, and overturning the very Foundation of the Morality of Human Actions; of which kind there are many Inſtances.

The firſt I ſhall mention is the Stoical Conceit of *Fate* or *Deſtiny*, and (which nearly reſembles it) *Judicial Aſtrology*; by which it being ſuppoſed, that all things happen in the World by an internal and inevitable Neceſſity, Men muſt be looked upon as the ſimple Inſtruments only of their own Actions; for which, conſequently, they are no more accountable upon this Preſumption, than a Clock is anſwerable for the Motion of its Wheels.

Another Opinion there is very nearly allied to this, which ſuppoſes the unalterable Conſequences of Cauſes, and of Effects; or the great Chain of Things, eſtabliſhed by the Creator, to ſtand by ſuch an Immoveable Decree, that even God has left Himſelf no Liberty of interpoſing in particular Caſes.

Most

Most pernicious likewiſe is that Conceit, which makes GOD allow a kind of Market of Sins, ſo as to ſuffer them to be bought off with Money, to be commuted for with Offerings, with the Obſervance of ſome vain Ceremonies, or the Utterance of ſome ſet Forms of Speech, without Amendment of Life, and an honeſt Endeavour to become Good Men. To this may be joyned, the ſottiſh Imagination of ſuch, who fancy that Almighty GOD is delighted with ſuch Inventions of Men, ſuch Inſtitutions and Ways of Living, as are diſagreeable to Human and Civil Society, as it is regulated by the Dictates of Reaſon and the *Laws of Nature.*

All ſuperſtitious Notions, ſuch as debaſe and diſhonour the Divine Nature and Worſhip, are carefully to be avoided, as contrary to true Religion.

The ſame thing muſt be ſaid of the Notions of thoſe Men, who imagin that the bare Exerciſe of Piety towards GOD in Acts of Devotion, as they are called, is ſufficient, without any Regard had to Honeſty of Life, or to thoſe Duties which we are to practiſe towards our Neighbour. Nor is the Conceit of others leſs Impious, who fancy, that a Man may be able, not only to fulfil his own Duty towards GOD, but even exceed what is required of him, and thereby transfer ſome of his Merits on others; ſo that one Perſon's Negligence in his Duty, may be ſupply'd from the Works of *Supererogation*, that is, the Over-righteouſneſs of another. Of the ſame Stamp is that ſhameful Opinion of ſome others, that imagine, that the Wickedneſs of ſome Actions

Actions is overlooked and excuſed by GOD, on the Account of the Dexterity, the Humour, or the Gallantry of the Perſons who do them; as if ſuch Sins paſſed only as Jeſts and Trifles in the Cogniſance of Heaven. No leſs wicked is it to believe, that thoſe Prayers can pleaſe GOD, by which a Man deſires, that others may ſuffer an undeſerved Evil, for the occaſioning or promoting an Advantage to himſelf; or to imagine, that Men may treat, in the worſt manner they pleaſe, ſuch as are of a different Perſuaſion from them in Religious Matters. Not to mention ſome other ſuch like Opinions, which carry indeed the Pretence of Piety, but in reality tend to the Deſtruction of Religion and Morality.

IV. 2. To arrive at a true Knowlege of our ſelves.

WHEN we have thus arm'd our Minds againſt all falſe Opinions of the Divine Nature and Worſhip, the main Concern behind is, for a Man accurately to examine his own Nature, and to ſtudy to *know himſelf.*

The Duties that reſult from ſuch a knowledge. L. N. N. l. 2. c. 4. § 5.

FROM this Knowledge of himſelf, rightly purſued, a Man is brought acquainted with his own Original; he comes to know perfectly his Condition here, and the Part he is to bear in the World. Hereby he will perceive, that he does not exiſt of himſelf, but owes his Being and Life to a Principle infinitely ſuperior to him; that he is endowed with Faculties far more noble than he ſees enjoy'd by the Beaſts about him; and farther, that he was not born by himſelf, nor purely for his own Service, but that he is a Part of Human kind. From thus knowing a Man's ſelf he muſt neceſſarily conclude, that he lives in Subjection to Almighty GOD, that he is obliged, according to the

Meaſur.

Meaſure of the Gifts he hath received from his Maker, to ſerve and honour Him; and moreover, to behave himſelf towards his Equals in ſuch a manner, as becomes a Sociable Creature. And in as much as GOD hath beſtowed on him the Light of Reaſon and Underſtanding, to guide him in the Courſe of his Life, it evidently follows, that he ought to make a right Uſe of it: And conſequently *not to act at random, without End or Deſign, but, whatever he undertakes, to propoſe thereby to himſelf ſome particular End, in its ſelf both poſſible and lawful, and to direct his own Actions ſuitably to that End; as alſo to uſe ſuch other Means as he ſhall find proper for the compaſſing it.* Again, from hence it follows, that ſince Truth and Right are always uniform and without alteration, ſo *a Man ought always to form the ſame Judgments of the ſame Things, and when he hath once judged truly, to be always conſtant in his Mind and Reſolution.* Farther it follows, that a Man's Will and Appetite ought not to get the Superiority over his Judgment, but follow and obey it, never making reſiſtance to its Decrees; or, which amounts to the ſame thing, *Men ought to form no Judgments but upon mature Deliberation, nor ever to act againſt their Judgments ſo formed.*

BESIDES, by conſidering and knowing himſelf, a Man will rightly apprehend his own Strength and Power: He will find that it is of a finite nature, having certain Limits beyond which it can never extend it ſelf; and therefore, that there are many Things in the World which he can no ways manage or compaſs, many that he can no ways hinder or reſiſt; L. N. N. l. 2. c. 4. § 7.

ſiſt, and other Things again not abſolutely above Human Power, but which may be prevented and intercepted by the Interpoſition of other ſuperior Powers. Again, another Sort of Things there are, which though we cannot compaſs by our bare Strength, yet we may, if it be aſſiſted and ſupported by Dexterity and Addreſs.

WHAT ſeems to be moſt free from outward Reſtraint, and moſt within our own Power is our *Will*; eſpecially ſo far as it is concerned in producing and exerting Actions ſuitable to our Species of Being, as we are reaſonable Creatures. Hence it follows, that *every Man ought to make it his main Care and Concern, rightly to employ all his Faculties and Abilities, in conformity to the Rules of right Reaſon.* For this is the Standard by which we are to rate the Worth of every Perſon, and to meaſure his intrinſical Goodneſs and Excellency.

As to other Matters which lie without us, before he enters upon the Purſuit of them, *A Man ſhould diligently examine, Whether they do not ſurpaſs his Strength? Whether they tend to a lawful End?* and, *Whether they are worth the Labour which muſt be ſpent in obtaining them?* When, upon mature Deliberation, he is reſolved to engage in any ſuch Affairs, a wiſe Man will indeed uſe his beſt Efforts to bring his Deſign about; but if he finds thoſe Endeavours ineffectual, he will not ſtrive againſt the Stream, and drive on his Deſigns with vain Hope, but quit his Purſuit without Grief or Anger at his Diſappointment. From theſe Conſiderations this further Conſequence may be drawn; That Man, as he is guided only by the Light of Rea-

Reaſon, ought principally to aſpire after that Happineſs in this World, which ariſes from the prudent Government of his Faculties, and from thoſe Aſſiſtances and Supports which the Divine Providence he knows will afford him in the univerſal Adminiſtration of things. Hence he will not leave things to meer Hazard and Chance, while there is room for Human Caution and Foreſight. But then, ſince human Foreſight is very weak in diſcovering future things, which are ſo far from being under our Guidance, that they frequently fall out beyond our Hopes and Expectations: Hence it is plain, that we ought neither too ſecurely to truſt to our preſent Condition, nor to ſpend too much Care and Anxiety on what is to come: and for the ſame reaſon, Inſolence in Proſperity and Deſpair in Adverſity are to be both avoided, as equally dangerous and equally abſurd.

V. 3. To regulate the meaſure of our Deſires in proportion to the Juſt value of the things we deſire.

ANOTHER neceſſary Improvement of our Mind and Underſtanding is, *To be able to ſet a juſt Price on thoſe Things which are the chief in moving our Appetites.* For, from this Knowledge it is that the degree of Deſire is to be determined, with which we may ſeek after them.

How we ought to ſeek for Honour or Eſteem.

AMONG theſe, that which bears the greateſt ſway, and appears with moſt ſplendor, and which moſt forceably moves Elevated and Noble Souls, is the Opinion of Worth and Excellency; an Opinion from whence ſprings what we uſually call *Glory* or *Honour*: In reſpect to which we are to form and temper our Minds in the following manner.

L. N. N. l. 2. c. 4. § 9.

WE muſt uſe our utmoſt Care and Endeavour to procure and preſerve that kind of *Eſteem* that

that is *ſimply* ſo called, that is, the Reputation of being Good and Honeſt Men; and if this Reputation be aſſaulted by the Lies and Calumnies of Wicked Men, we are to uſe all poſſible Pains to wipe them off; but if that be not in our Power, we are to comfort our ſelves with the Teſtimony of a good Conſcience, and with the Aſſurance, that our Integrity is ſtill known to GOD.

As for that *Eſteem*, which is oft-times called *Intenſive*, or *Eſteem of Diſtinction*, but more commonly *Honour* or *Glory*, we are no otherwiſe to purſue it, than as it redounds from ſuch worthy Actions as are conformable to Right Reaſon, and productive of the Good of Human Society; but even then good Heed is to be taken, that hereby our Mind do not ſwell with Arrogance and Vain-glory. If at any time we have no Opportunity, or want an Occaſion of ſhewing our Worth, without being able to procure one, we muſt bear this ill Fortune with Patience, ſince there is nothing in it that can be charged upon our Default. To value our ſelves upon, and make our boaſts of what is empty, vain, and trifling, is moſt impertinent and ridiculous; but it is abominably Wicked, as well as extremly Fooliſh, to aſpire to Fame and to Honours by evil Arts, and by Deeds repugnant to Reaſon; and to deſire Preheminence above others, only to be able to inſult over them, and to make them obnoxious to our Pleaſure.

VI. *In what manner we may deſire* Riches.

THE *Deſire of outward Poſſeſſions, Riches, and Wealth*, does alſo prevail greatly in the Minds of Men; and no wonder, ſince Men have not only need thereof for their own Sup-

Support and Preſervation in the World, but alſo often lie under an indiſpenſible Duty to provide them for others. But then, becauſe our Wants are not infinite, but lie in a very narrow Compaſs, and ſince Nature is not wanting in a plentiful Proviſion for the Neceſſities of her Sons; and laſtly, ſince all that we can heap together muſt, at our Death, fall to others; we muſt moderate our Deſire and our Purſuit of thoſe Things, and govern our ſelves in the Uſe of them according to the juſt Occaſions of Nature, and the modeſt Demands of Temperance and Sobriety. We muſt do no diſhoneſt or baſe Thing for the procuring them; we muſt not increaſe them by ſordid Avarice, nor ſquander them away by profuſe Prodigality, nor in any ways make them ſubſervient to vicious and diſhoneſt Purpoſes. Farther, ſince Riches are of a very periſhable Nature, and may be taken from us by many Accidents and Caſualties, we muſt, with reſpect to 'em, put our Mind in ſo even a Temper, as not to loſe it ſelf if it ſhould happen to loſe them.

VII. *In what manner we may deſire Pleaſures.* L. N. N. l. 2. c. 4. § 11.

THE Deſire of *Pleaſures* does as ſtrongly excite the Minds of Men as that of *Honour* or *Riches*: In reference to theſe we muſt obſerve, that there are *Innocent Pleaſures* and *Criminal Pleaſures*. The latter of which muſt be always avoided; but it is by no means a Fault to enjoy the former, provided it be done with moderation, and in conformity to the Rules of Temperance and Sobriety. As there is no Fault to avoid, as much as may be, unneceſſary Grief and Pain, becauſe they tend to the Deſtruction of the Body; ſo Reaſon, on the other ſide, is ſo far from forbidding us the Enjoyment of

moderate Recreation and innocent Pleaſure, that it directs us to entertain our Senſes with ſuch Objects as are, in this manner, agreeable and delightful to them, ſince hereby the Mind is unbent and refreſh'd, and render'd more active and vigorous. But then, in the Enjoyment of theſe lawful and innocent Gratifications, great Care is to be taken, that we enjoy them to ſuch a Degree only, that we be not thereby weakened and enervated; that neither the Vigour of the Body or Soul be thereby leſſen'd; that they waſte not nor conſume our Wealth, when it might be better and more uſefully laid out; and that they ſteal not our Time from better and more neceſſary Employments. Laſtly, This muſt be an inviolable Rule, that no Pleaſure muſt be purchaſed at ſo dear a Rate, as the Neglect or Tranſgreſſion of our Duty; nor ought any to be receiv'd that brings after it Loſs, Diſgrace, Sorrow, or Repentance.

VIII. 4. *We ought* to ſubject our Paſſions to the Government of our Reaſon. L. N. N. l. 2. c. 4 § 11.

Lastly, The chief Care incumbent on us, in order to improve and well cultivate our Mind, is, to uſe the utmoſt Diligence, *To gain the Maſtery over our Paſſions*; to maintain the Sovereignty of our Reaſon over the Motions and Affections of our Minds; the greateſt Part of which, if they gain the Aſcendant, and grow maſterleſs, do not only impair the Health of the Body, and the Vigour of the Soul, but caſt ſuch a Cloud on the Judgment and Underſtanding, as to wreſt them violently from the Ways of Reaſon, and of Duty. So that the natural Principle of Prudence and Probity amongſt Men, may be juſtly ſaid to be found-

ed,

ed in calming and cooling the Paſſions. But let us briefly ſpeak of them in particular.

JOY is in it ſelf a Paſſion moſt agreeable to Nature; but ſtrict Care is to be taken, that it break not out on improper Occaſions, that it ſhew not itſelf in Matters vain or trifling, baſe or indecent.

SORROW, like a Canker, waſtes both the Body and Soul: it is therefore as much as poſſible to be remov'd and expell'd, nor ever to be admitted, even moderately, unleſs when by the Ties of Humanity, we are obliged to expreſs our Concern, or Pity at the Misfortunes, or at the Deaths of others; and as it is requiſite to the great Duty of Repentance.

LOVE is a Paſſion of a benevolent and friendly Nature to Mankind; but yet it is to be ſo wiſely managed and moderated, that it be not fix'd upon an unworthy Object; that we take not unlawful Ways to ſatisfy its Demands; that it keep within due Bounds, ſo as not to degenerate into Diſeaſe and Diſquiet, if the beloved Object is not to be obtained.

HATRED is a Paſſion pernicious, as well to the Perſon who employs it, as to thoſe againſt whom it is employ'd; it is therefore diligently to be quenched and ſtifled, leſt it betray us to Injuries, and Breach of Duty againſt our Neighbours. And when any Perſons do really deſerve our Averſion, we muſt even then take care not, on their Account, to create Uneaſineſs and Diſquiet to our ſelves.

ENVY is a moſt deform'd Monſter, ſometimes producing ill Effects in others, but always in the Envious Perſon, who, like Iron cankered

kered with Ruſt, not only defiles, but deſtroys himſelf continually.

HOPE, although in it ſelf a Paſſion mild, eaſy, and gentle, yet is it alſo to be brought under due Regulation. We muſt be careful not to direct it to Things vain or uncertain; nor, by placing it on Objects out of our Reach, and beyond our Power, make it tire it ſelf to no purpoſe.

FEAR, as it is a dangerous Enemy to Men's Minds, ſo is it a Paſſion altogether uſeleſs and unprofitable. It is indeed by ſome eſteemed the Parent of good Caution, and conſequently, the Occaſion of Safety; but this good Caution may owe it ſelf to a much better Principle, it may ariſe without the Aſſiſtance of Fear, from a wary Circumſpection, and a Prudence alike untouched with Anxiety or with Conſternation.

ANGER is the moſt violent, as well as the moſt deſtructive of all the Paſſions, and is therefore to be reſiſted with our utmoſt Strength and Endeavour. It is ſo far from exciting Men's Valour, and confirming their Conſtancy in Dangers, as ſome alledge, that it has a quite contrary Effect; for it is a Degree of Madneſs, it renders Men blind and deſperate, and runs them headlong into their own Ruin.

DESIRE OF REVENGE is nearly related to *Anger*; which, when it exceeds a Moderate Defence of our ſelves and Concerns, and a juſt Aſſertion of our Rights againſt the Invaders of them, turns, beyond Diſpute, into a Vice.

IX. *How far the Study of Arts*

IN ſuch Duties as we have reckoned up doth that Culture of the Mind chiefly conſiſt, which all Men are indiſpenſably obliged to look after: But

But there is ſtill behind a more peculiar Culture and Improvement of the Mind, conſiſting in the various Knowledge of Things, and *the Study of Arts and Sciences.* This Knowledge, it is true, cannot be ſaid to be abſolutely neceſſary to the Diſcharge of our Duty in general, but yet muſt by all be allowed to be exceedingly uſeful to ſupply the Neceſſities and promote the Conveniencies of Human Life, and therefore by every one to be followed, according as his own Capacity and Occaſion will permit. *and Sciences is neceſſary.* L. N. N. l. 2. c. 4. § 13.

No one diſputes the *Uſefulneſs of thoſe Arts,* which ſupply the Neceſſities, or contribute to the Convenience of Human Life.

As to *Sciences*; ſome may be ſtiled *Uſeful*; others *Curious*, and others again *Vain.*

In the Number of *uſeful Sciences*, I reckon *Logick*, which teaches to reaſon juſtly, cloſely, and methodically; thoſe *Sciences which have any reſpect to Morality, Phyſick, and all ſuch Parts of Mathematicks as lay the Foundation of thoſe practical Arts*, which ſerve to procure and augment the Neceſſaries or Conveniencies of Life.

By *Curious*, or *Elegant Sciences*, I underſtand ſuch as are not indeed of ſo neceſſary Uſe, as to render the Life of Man leſs ſociable, or leſs convenient upon the Want of them; but yet ſuch as ſerve to gratify and pleaſe an innocent Curioſity, to poliſh and adorn our Wit, and to embelliſh and render our Underſtanding more compleat: Such *Sciences* are, *Natural and Experimental Philoſophy, the more fine and ſubtile Parts of Mathematicks, Hiſtory, Criticiſm, Languages, Poetry, Oratory*, and the like.

By *Vain Sciences*, I mean ſuch as are made up of falſe and erroneous Notions, or are employ'd about frivolous, trifling, and unprofitable Speculations; ſuch are *the Amuſements of old Philoſophers*, *the Dreams of Aſtrologers*, and *the Subtilties of the School-men*.

To employ Labour and Pains in theſe laſt Sort of Studies is highly unworthy any Man, and an unpardonable Waſte of his Time. But whoſoever would not deſerve to be accounted an uſeleſs Lump on Earth, a Trouble to himſelf and a Burthen to others, ought, as far as he has Means and Opportunity, to employ himſelf in ſome of the aforemention'd *Arts* and *Sciences*. Every one at leaſt ought, in a proper Time, *to take upon himſelf ſome honeſt and uſeful Employment*, agreeable to his natural *Inclinations*, ſuitable to the *Abilities* of his *Body* and *Mind*, *Extraction*, and *Wealth*; or according as the juſt *Authority* of his *Parents*, the *Commands* of his *Superiours*, or the *Occaſion* and *Neceſſity* of his own *private Circumſtances* ſhall determine.

X. *Wherein conſiſts the Care of the Body.*

Altho' the Care of our Soul, which we have been explaining, is the moſt difficult, as well as the moſt neceſſary Part of our Charge in this Life, yet ought we by no means to neglect *the Care of our Body*; theſe two conſtituent Parts of us being ſo ſtrictly united and ally'd to each other, that no Injury or Hurt can come to the one, but the other muſt likewiſe bear its Part in the Suffering.

We muſt therefore, as far as poſſible, continue and increaſe the *natural Strength* and *Powers* of our Bodies, by convenient *Food* and proper *Exerciſe*; not ruining them by any *Intemperate*

perate Exceſs in Eating or Drinking, nor waſting and conſuming them by unneceſſary or immoderate *Labours*, or by any other Abuſe or Miſapplication of our *Abilities*. And upon this Account, *Gluttony*, *Drunkenneſs*, the immoderate Uſe of *Women*, and the like, are to be avoided: And beſides, ſince unbridled and exorbitant *Paſſions*, not only give frequent Occaſion to diſturb *Human Society*, but are very hurtful even to the Perſon *himſelf*; we ought to take care with our utmoſt to quell *them*, and ſubject *them* to Reaſon. And becauſe many Dangers may be eſcap'd, if we encounter 'em with *Courage*, we are to caſt off all *Effeminacy* of the Mind, and to put on *Reſolution* againſt all the terrible Appearances that any Event may ſet before us.

XI. *Whether a Man has the Power of his own Life.*

And yet, becauſe no Man could give *himſelf* Life, but it muſt be accounted as the bounteous Favour of *God*, it appears, that Man is by no means veſted with ſuch a Power over his own *Life*, as that he may put an *End* to it when he pleaſes; but he ought to tarry, till he is call'd off by Him who placed him in this Station. Indeed, ſince Men both can and ought to be ſerviceable to one another, and ſince there are ſome Sorts of Labour, or an Overſtraining in any, which may ſo waſte the Strength of a Man, that old Age and Death may come on much ſooner than if he had led an eaſy and painleſs Life; there is no doubt but that a Man may, without any Contravention to this Law, chuſe that Way of living which may with ſome probability make his Life the *ſhorter*, that ſo he may become more uſeful to Mankind. And whereas ſometimes the Lives of *many* will be

loſt, except ſome Number of Men expoſe themſelves to a Probability of loſing their own on their behalf; in this Caſe the lawful *Governour* has Power to lay an Injunction on any *private* Man under the moſt grievous Penalties, not to decline by Flight ſuch Danger of loſing his Life. Nay farther, he may of *his own Accord* provoke ſuch Danger, provided there are not *Reaſons more forcible* for the contrary; and by thus Adventuring he has hopes to ſave the Lives of *others*, and thoſe *others* are ſuch as are worthy ſo dear a Purchaſe. For it would be ſilly for any Man to engage his Life together with another to *no purpoſe*; or for a Perſon of *Value* to die for the Preſervation of a *paltry Raſcal*. But for any other Caſes, there ſeems nothing to be required by the *Law of Nature*, by which he ſhould be perſuaded to prefer another Man's Life before his own, but that all things rightly compared, every Man is allowed to be *moſt dear* to *himſelf*. And indeed all thoſe who voluntarily put an end to their own Lives, either as *tir'd* with the many *Troubles* which uſually accompany this Mortal State; or from an *Abhorrence* of *Indignities* and *Evils* which yet would not render them ſcandalous to *Human Society*; or thro' *Fear*, or *Pains*, or *Torment*, by enduring which with Fortitude, they might become uſeful Examples to others; or out of a vain *Oſtentation* of their *Fidelity* and *Bravery*; All theſe, I ſay, are to be certainly reputed *Sinners againſt the Law of Nature*.

Self-Defence moderated.

XII. BUT whereas it often happens that this *Self-Preſervation*, which the tendereſt Paſſion and exacteſt Reaſon thus recommends to Mankind, does ſeem to interfere with our Precepts concerning

cerning *Society*, then when our own Safety is brought into Jeopardy by another, ſo far that either we muſt periſh, or ſubmit to ſome very grievous Miſchief, or elſe we muſt repel the Aggreſſor by force and by doing him Harm; Therefore we are now to deliver, *With what Moderation the Defence of our ſelves is to be tempered.* This Defence of our ſelves then will be ſuch as is, either *without any Harm* to him from whom we apprehend the Miſchief, by rendring any Invaſion of us formidable to him and full of Danger; or elſe by *hurting* or *deſtroying* him. Of the *former* way, [whether (in *private* Men) by *keeping off* the Aſſailant, or by *Flight*, *&c.*] there can be no Doubt but that 'tis lawful and altogether blameleſs.

XIII. *We may repel force by force, even ſo far as to kill an unjuſt Aggreſſor.* L. N. N. l. 2. c. 5. § 2.

But the *latter* may admit of Scruple, becauſe Mankind may ſeem to have an *equal Loſs*, if the *Aggreſſor* be killed, or if I loſe *my* Life; and becauſe one in the ſame Station with my ſelf will be deſtroyed, with whom it was my Duty to have lived in *Civil Society:* Beſide, that a *forcible Defence* may be the Occaſion of *greater Outrages*, than if I ſhould betake my ſelf to flight, or patiently *yield* my Body to the Invader. But all theſe are by no means of ſuch Weight as to render this Sort of Defence unlawful. For when I am dealing fairly and friendly with *another*, it is requiſite that he ſhew himſelf ready to do the *like*, or elſe he is not a fit Subject of ſuch good Offices from me. And becauſe the End of the Law of Society is the *Good of Mankind*, therefore the Senſe thereof is to be taken, ſo as effectually to preſerve the Welfare of every *Individual* or particular Man. So that if another Man make an *Attempt*

tempt upon my Life, there is no Law that commands me to *forgoe* my own Safety, that ſo he may practiſe his Malice with *Impunity:* And he that in ſuch caſe is *hurt* or *ſlain*, muſt impute his Miſchief to his own *Wickedneſs*, which ſet me under a Neceſſity of doing what I did. Indeed otherwiſe, whatſoever *Good* we enjoy either from the Bounty of *Nature*, or the Help of our own *Induſtry*, had been granted to us in vain, if we were not at liberty to *oppoſe* the Violences of Ruffians, who would wrongfully raviſh all from us; and *honeſt* Men would be but a ready Prey for *Villains*, if they were not allowed to make uſe of *Force* in defence of themſelves againſt ehe others Inſults. * Upon the whole then, it would tend to the *Deſtruction* of Mankind, if *Self Defence* even with *Force* were prohibited to us.

XIV. *Extremities laſt to be uſed.* L. N. N. l. 2. c. 5. § 3.

NOT however that hence it follows, that as ſoon as any *Injury* is threatned us, we may *preſently* have reçourſe to *Extremities*; but we muſt firſt try the *more harmleſs Remedies*; for inſtance, we muſt endeavour to keep out the Invader by cutting off his Acceſs to us; to withdraw into ſtrong Places; and to admoniſh him to deſiſt from his outragious Fury. And it is alſo the Duty of a prudent Man to put up a *ſlight Wrong*, if it may conveniently be done, and to *remit* ſomewhat of his Right, rather than, by an unſeaſonable Oppoſition of the Violence, to expoſe himſelf to a *greater Danger*; eſpecially if that Thing or Concern of

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* See *Grotius de Jure Belli & Pacis, Lib.* I. *& Chap.* 2. *Lib.* II. *c.* 1. § 3. *& ſeq.*

ours

ours upon which the Attempt is made, be ſuch as may eaſily be made amends for or repaired. * But in Caſes where by theſe or the like means I cannot ſecure my ſelf, in order to it I am at liberty to have recourſe even to *Extremities.*

XV. *Self-Defence how far juſtifiable in a ſuppoſed ſtate of Natural Liberty.*

BUT that we may clearly judge, whether a Man contains himſelf within the Bounds of an *unbleameable Defence of himſelf*, it is firſt to be examined, whether the Perſon be one who is in a State of *Natural Liberty* or *ſubject to no Man*, or one who is obnoxious to ſome *Civil Power*. In the *firſt* Caſe, if another ſhall offer Violence to me, and cannot be brought to change his malicious Mind and live quietly, I may repel him even by *killing* him. And this not only when he ſhall attempt upon my *Life*, but if he endeavour only to *wound* or *hurt* me, or but to *take away* from me my Goods, without meddling with my Body. For I have no Aſſurance but from theſe *leſſer Injuries* he may proceed to *greater*; and he that has once profeſſed himſelf my Enemy (which he doth whilſt he injures me without Shew of Repentance) gives me, as far as 'tis in his Power to give, a full Liberty of proceeding againſt him, and reſiſting him in ſuch manner as I ſhall find moſt neceſſary for my own Safety. And indeed the *Sociality* neceſſary to Human Life would become unpracticable, if a Man may not make uſe even of *Extremities* againſt him who ſhall irreclaimably *perſiſt* in the Commiſſion tho' but of *meaner Wrongs*. For at that rate the moſt *modeſt* Perſons would be the

* *Grotius de Jure Belli & Pacis, Lib.* 1. *cap.* 1. con-

continual Laughing-ſtock of the *vileſt* Rakehels.

XVI. *How the Right of Self-defence is limited in a State of Civil Society.* L. N. N. l. 2. c. 5. § 4.

BUT in *Civil Society*, thoſe who are Subects to the *Civil Power*, may then only uſe Violence in the Defence of themſelves, when the Time and Place will not admit of any Application to the Magiſtrate for his Aſſiſtance in repelling ſuch Injuries by which a Man's Life may be hazarded, or ſome other moſt valuable Good which can never be repaired, may be manifeſtly endangered.

XVII. *Of the Time when in a State of Nature Self defence may be allowable.*

AS for the time when Men may put in practice their *juſt Right* of *Self-defence*, it may be learnt from the following Rules.

ALTHO' every one, under that Independence in which all Men are ſuppoſed to be in a *State of Nature*, may and ought to preſume, that all Men are inclined to perform towards him all thoſe Duties which the *Law of Nature directs*, until he has evident Proof to the contrary: Nevertheleſs, ſince Men have *natural Inclinations* to that which is ill, no one ought to rely ſo ſecurely on the Integrity of another, as to neglect taking all neceſſary Precautions to render himſelf ſecure, and placed, as far as may be, out of the Reach of other Men's ill Deſigns. It is but *common Prudence* to ſtop up all Avenues againſt thoſe from whom we apprehend Hoſtilities, to be provided with ſerviceable Arms, to raiſe Troops, to get Succour and Aſſiſtance, in caſe of need, by Alliances and Confederacies, to have a watchful Eye over the Actions and Behaviour of thoſe whom we have reaſon to apprehend to be our Enemies; and, in a word, to uſe all other Precautions of this Nature, which appear neceſſary

neceſſary to prevent our being ſurprized or found unprovided. The Jealouſy and Suſpicion which we ought to have of each other, from our Knowledge of the Pravity of Human Nature, will juſtifie our acting thus far; but then it muſt ſtop here: it muſt not put us upon uſing Violence to our Neighbours, under pretence of diſabling them from injuring us, and of preventing their making a miſchievous Uſe of that ſuperior Power we ſee them have; eſpecially if we find that this Increaſe of Power in them, and their Superiority over us, was the Product of their innocent Induſtry, or the Gift of Providence, and not the Reſult of Injury and Oppreſſion.

*NAY, if our Neighbour, whom we ſee powerful enough to hurt us, ſhould ſhew an Inclination to uſe that Power miſchievouſly, by actually injuring others, yet ſhall not this juſtifie our Aſſaulting him by way of prevention, till we have good Evidence, that he deſigns us alſo Miſchief; unleſs we are under ſome prior Engagement or Alliance, to ſupport the Perſons we ſee thus injuriouſly attacked by a ſuperior Power. In this Caſe we may with greater Vigour oppoſe the Invader, and take the Part of our injured Ally; ſince we have very good Reaſon to apprehend, that when by his ſuperior Power he has oppreſſed him, he will apply the ſame Force againſt us; and that the firſt Conqueſt he makes is to be the Inſtrument of another that he intends.

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* See *Grotius de Jure Belli & Pacis, Lib. 2. cap.* 1. § 17, *&c.* and *c.* 22. § 5.

BUT

BUT when we have evident Proof that another does actually intend, and has taken proper Meaſures to do us an Injury, altho' he has not openly declared ſuch his Intention; then we may fairly put our ſelves on our Defence, and anticipate the Aggreſſor before he compleats the Preparations he is making to do us the deſigned Miſchief: Provided notwithſtanding we have endeavoured, by friendly Advice, to move him to lay aſide his ill Purpoſes ſo long, that there remains no Hopes of his being prevailed upon to do ſo by fair and gentle Means: In uſing which friendly Advice and gentle Means, care muſt be taken, that it be not done when it may prove a Prejudice and a Diſadvantage to our own Affairs. He who firſt forms the Deſign to do an injurious Act, and firſt makes Preparation to bring it about, is to be accounted the Aggreſſor; altho' it may perhaps ſo fall out, that the other uſing greater Diligence, may prevent him, and ſo commit the firſt open Acts of Hoſtility. It is not abſolutely neceſſary to a juſtifiable *Self-defence*, that I receive the firſt Stroke, or that I only ward off and avoid the Blows that are aimed at me.

BUT farther: In a *State of Nature* of which we are ſpeaking, a Man has not only a Right to repel a preſent Danger with which he is menaced, but alſo, after having ſecured himſelf from the Miſchief intended him, he may purſue his Succeſs againſt the Aggreſſor, till he has made him give him *ſatisfactory Security of his peaceable Behaviour for the time to come.* Concerning which Caution and Security, the following Rule may be uſefully obſerved: *If a Man having injured me, ſhall preſently after, repenting of what he had done, come voluntarily and ask my Pardon,*

pardon, and offer Reparation of the Damage; I am then obliged to be reconciled to him, without requiring of him any farther Security than his Faith and Promiſe to live hereafter in Peace and Quietneſs with me. For when of his own accord any Perſon takes ſuch meaſures, it is a ſatisfactory Evidence, that he has altered his Mind, and a ſufficient Argument of his firm Reſolution to offer me no Wrong for the future. *But if a Man having injured me, never thinks of asking Pardon, or of ſhewing his Concern for the Injuries he has done me, till he is no longer in Condition to do them, and till his Strength fails him in proſecuting his Violences; ſuch an one is not ſafely to be truſted on his bare Promiſes, his Word alone being not a ſufficient Warrant of the Sincerity of his Proteſtations.* In ſuch Caſe, in order to our farther Security, we muſt either cut off from him all Power of doing Miſchief, or elſe lay upon him ſome Obligation of greater Weight and Force than his meer Promiſe, ſufficient to hinder him from appearing ever after formidable to us.

XVIII. *When and how far a Man may defend himſelf with arm'd force in a State of Civil Society.*

BUT among Men who live in a *Community*, the Liberties for *Self-defence* ought not to be near ſo large. For here, tho' I may know for certain, that another Man has *armed* himſelf in order to ſet upon me, or has openly *threatned* to do me a Miſchief; this will by no Means bear me out in *aſſaulting* him; but he is to be *informed* againſt before the Civil Magiſtrate, who is to require *Security* for his good Behaviour. The Uſe of *Extremities* in repelling the Force being then only juſtifiable, when I am *already* ſet upon, and reduced to ſuch *Streights*, that I have no Opportunity to require the *Protection* of the Magiſtrate, or the *Help* of my Neighbours; and even

even then I am not to make uſe of *Violence*, that by the Slaughter of my Adverſary I may *revenge* the Injury, but only becauſe without it my *own Life* cannot be out of *Danger*.

Of the Time when in a State of Civil Society Self-defence may be allowable.

Now the Inſtant of *Time*, when any Man may with Impunity *deſtroy* another in his own Defence, is, when the Aggreſſor, being *furniſhed* with Weapons for the Purpoſe, and *ſhewing* plainly a *Deſign* upon my Life, is got into a *Place* where he is very capable of doing me a Miſchief, allowing me ſome time, in which it may be neceſſary to prevent rather than be prevented; although in *foro humano* a little *Exceeding* be not much minded in regard of the great Diſturbance ſuch a Danger muſt be thought to raiſe in the Spirit of Man. And the *Space of Time* in which a Man may *uſe Force in his own Defence*, is ſo long as till the Aſſailant is either *repulſed*, or has *with-drawn* of his own accord, (whether in that Moment *repenting* of his wicked Deſign, or for that he ſees he is like to *miſs* of his Aim) ſo that for the preſent he cannot hurt us any more, and we have an Opportunity of retiring into a Place of Safety. * For as for *Revenge* of the Wrong done, and *Caution* for future Security, that belongs to the Care of the *Civil Magiſtrate*, and is to be done only by *his* Authority.

XIX. *Whether a Man may uſe his*

Farthermore, both in a *State of Nature*, and in a *Civil State*, it is lawful for every Man to defend himſelf, if the *Precautions* beforementioned be taken againſt him who attempts

* *Grotius de Jure Belli & Pacis, Lib.* 2. *Cap.* 1. § 5.

to

to take away his Life; whether it be *deſignedly*, and with a *malicious Intention*, or *without any particular Deſign* againſt the Party aſſaulted: As ſuppoſe a Mad-man, or a Lunatick, or one that miſtakes me for ſome other Perſon who is his Enemy, ſhould make an Attempt on my Life, I may juſtifiably uſe my Right of *Self-Defence*; for the Perſon from whom the Attempt comes, whereby my Life is hazarded, hath no Right to attack me, and I am by no means obliged to ſuffer Death unneceſſarily; on which account it is altogether unreaſonable that I ſhould prefer *his* Safety to *my own*.

Right of Self-defence againſt one that aſſaults him by miſtake. L. N. N. l. 2. c. 5. § 5.

XX. *How the moſt juſt Self-defence ought to be managed: and of Duels.*

NEVERTHELESS though true it is, that we ought not to take away another Man's *Life*, when it is poſſible for us after a more convenient way to avoid the Danger we are in; yet in conſideration of that *great Perturbation of Mind*, which is wont to be occaſion'd upon the Appearance *of imminent Miſchief*, it is not uſual to be *over-rigorous* in the Examination of theſe Matters; for it is not likely that a Man *trembling* under the *Apprehenſion* of Danger, ſhould be able to find out ſo exactly all thoſe *Ways of eſcaping*, which to one who *ſedately* conſiders the Caſe may be plain enough. Hence, though it is *Raſhneſs* for me to come out of a *ſafe* Hold to him who ſhall *challenge* me; yet, if another ſhall ſet upon me in an *open* Place, I am not ſtreight obliged to betake my ſelf to *Flight*, except there be at hand ſuch a Place of *Refuge* as I may withdraw into without Peril: Neither am I always bound to *retire*; becauſe then I turn my defenceleſs Back, and there may be hazard of falling; beſide, that having once loſt my Poſture, I can hardly recover it again. But as

the Plea of *Self-defence* is allow'd to that Perſon who ſhall thus encounter Danger, when he is going about his lawful *Buſineſs*, whereas if he had ſtaid at Home he had been ſafe enough; ſo it is denied to him who being challenged to a *Duel*, ſhall by appearing *ſet himſelf* in that Condition, and except he kill his Adverſary, himſelf muſt be ſlain. * For the *Laws* having *forbidden* his venturing into ſuch *Danger*, any Excuſe on account *thereof* is not to be regarded.

XXI. *Defence of Members.* L. N. N. l. 2. c. 5. § 10.

WHAT may be done for the Defence of *Life* may alſo for the *Members*; ſo as that he ſhall be acquitted for an *honeſt Man* who ſhall *kill* a Ruffian, that perhaps had no farther Intention than to *maim* him, or give him ſome *grievous Wound*: For all Mankind does naturally abhor to be *maimed* or *wounded*; and the cutting off any, eſpecially of the more noble Members, is often not of much leſs value than Life it ſelf; beſide, we are not ſure beforehand, whether upon ſuch *wounding* or *maiming* Death may not follow; and to endure this is a Sort of *Patience* that ſurpaſſes the ordinary Conſtancy of a Man, † to which no man is regularly obliged by the Laws, only to gratifie the outragious Humour of a Rogue.

XXII. *Defence of*

MOREOVER, what is lawfully to be done for Preſervation of *Life*, § is adjudged to be ſo for

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* See *Grotius de Jure Belli & Pacis, Lib.* 2. *Cap.* 1. § 15.

† See *Grotius de Jure Belli, & Pacis, Lib.* 2. *Cap.* 1. § 6.

§ Mr. *Budæus* denies this (in the 2d Part of his *Elements of Practical Philoſophy, chap.* 4. *ſect.* 3.) and his Reaſon is, That there is no *Proportion between the Life and*

for *Chaſtity*: Since there cannot be a more horrid *Abuſe* offered to an honeſt Woman, than to force her out of that which being kept undefiled is eſteemed the greateſt *Glory* of their Sex; and to put upon her a Neceſſity of raiſing an Offſpring to her Enemy out of her own Blood. *Chaſtiy.* L. N. N. l. 2. c. 5. § 11.

As for *Defence of Goods or Eſtate*, this may, among thoſe who are in a State of *Natural Liberty*, go as far as the *Slaughter* of the Invader, † provided what is in Controverſie be not a *Thing contemptible*. For without *Things neceſſary* we cannot keep our ſelves alive; and he equally declares himſelf my Enemy, who wrongfully ſeizes my *Eſtate*, as he that attemps upon my *Life*. But in *Communities*, where what is raviſhed from us may, with the Aſſiſtance of the *Civil Authority*, be recovered, this is not XXIII. *Defence of Goods or Eſtate.* L. N. N. l. 2. c. 5. § 16.

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and the Honour of any Perſon. But can any Violation be too great for a Woman to expect from a Man that is arriv'd to ſuch a Pitch of Brutality? Beſides, *Honour* is a *Good* whoſe Loſs is not only irrecoverable, but which, among civiliz'd Nations, is placed in the ſame Degree of Value with Life it ſelf. After all, does not ſuch an Act of Hoſtility as this, give her a perfect Right to have recourſe to Extremities againſt a Man, who to ſatisfie his brutiſh Paſſion, irreparably ſtains the Honour and takes away the Liberty of an honeſt Woman? See *Grotius de Jure Belli & Pacis, lib.* 2. *cap.* 1. § 7.

† The Author I juſt now quoted pretends in the ſame place, that *no one can juſtifiably kill a Thief, unleſs he attempts to ſteal from him ſo conſiderable a Part of his Subſtance, as that he could not live upon the Remainder.* But this learned Author has ſaid nothing to invalidate the Principles, and confute the Reaſons alledged to the contrary by our Author, in his large Work of *The Law of Nature and Nations*, of which this is an Abridgment. See *Lib.* 2. *Cap.* 5. § 16.

regularly allowed; unleſs in ſuch caſe when he that comes to take away what we have, cannot be brought to *Juſtice:* On which account it is, that we may lawfully kill *Highwaymen* and *Night-robbers.*

XXIV. *Self Defence in him that firſt injur'd.* L. N. N. l. 2. c. 6. § 19.

And thus much for *Self-Defence* in thoſe who without Provocation are *unjuſtly invaded* by others: But for him who has *firſt* done an *Injury* to another, he can only then rightly *defend* himſelf with *Force*, and *hurt* the other *again*, when having *repented* of what he has done, he has offered *Reparation* of the Wrong and *Security* for the future; and yet he who was *firſt injured*, ſhall, out of ill Nature, *refuſe* the ſame, and endeavour to *revenge* himſelf by Violence; [ſhewing hereby that he ſeeks not ſo much *Reparation* and *Right* to himſelf, as *Miſchief* to the other.]

XXV. *Self Preſervation in Caſes of Neceſſity.* L. N. N. l. 2. c. 6.

Lastly, *Self-Preſervation* is of ſo much regard, that, if it cannot otherwiſe be had, in many Caſes it exempts us from our Obedience to the ſtanding Laws; and on this Score it is, that *Neceſſity* is ſaid to *have no Law.* For ſeeing Man is naturally inſpired with ſuch an earneſt Deſire to preſerve himſelf, it can hardly be preſumed that there is any Obligation laid upon him, to which he is to ſacrifice his *own Safety.* For tho' not only *God*, but the *Civil Magiſtrate*, when the Neceſſity of Affairs requires it, may lay upon us ſo ſtrict an Injunction, that we ought rather to die than vary a Little from it; yet the *general Obligation* of Laws is not held to be ſo rigorous. For the Legiſlators, or thoſe who firſt introduced *Rules* for Mankind to act by, making it their Deſign to promote the *Safety* and *common Good* of Men, muſt regularly be ſuppoſed to have had before their Eyes the Condition

dition of *Human Nature*, and to have conſidered how *impoſſible* it is for a Man *not* to ſhun and keep off all Things that tend to his own *Deſtruction*. Hence thoſe Laws eſpecially, called *Poſitive*, and all *Human Inſtitutions* are judged to except *Caſes of Neceſſity*; or, not to oblige, when the Obſervation of them muſt be accompanied with ſome Evil which is *deſtructive* to *Human Nature*, or not tolerable to the *ordinary Conſtancy* of Men; unleſs it be *expreſsly* ſo ordered, or the *Nature* of the Thing requires, that even *that* alſo muſt be undergone. Not that Neceſſity *juſtifies* the Breach of a Law and Commiſſion of Sin; but it is preſumed, from the favourable Intention of the Legiſlators, and the Conſideration of Man's Nature, that *Caſes of Neceſſity* are not included in the general Words of a Law. This will be plain by an Inſtance or two.

XXVI. *Cutting off Members.* L. N. N. l. 2. c. 6. § 3.

(I.) THOUGH otherwiſe Man have no ſuch Power over his own *Members*, as that he may loſe or maim any of them at his pleaſure; yet he is juſtifiable in *cutting off* a gangren'd Limb, in order to ſave the *whole Body*; or to preſerve thoſe *Parts* which are *ſound*; or leſt the other Members be rendred *uſeleſs* by a dead and cumberſome Piece of Fleſh.

XXVII. *One loſt to ſave many.*

(II.) IF in a *Shipwrack* more Men leap into the Boat than it is *capable* of carrying, and no one has more Right than another to it; they may *draw Lots* who ſhall be caſt overboard; and if any Man ſhall *refuſe* to take his chance, he may be thrown over without any more ado, as one that ſeeks the Deſtruction of *all*.

XXVIII. *One haſ-*

(III.) IF *two* happen into imminent Danger of their Lives, where *both* muſt periſh; one

tens the Death of another to ſave himſelf.

may, as he ſees good, haſten the Death of the other, that he may ſave *himſelf*. For inſtance, If I, who am a skilful Swimmer, ſhould fall into ſome deep Water with another who could not ſwim at all, and he clings about me; I not being ſtrong enough to carry *him* off and *my ſelf* too, I may put him off with *force*, that I may not be drowned together with him; tho' I might for a little while be able to keep him up. So in a Shipwrack, if I have got a Plank which will not hold *two*, and *another* ſhall endeavour to get upon it, which if he does, we are *both* like to be drowned, I may keep him off with what *violence* I pleaſe. And ſo if *two* be purſued by an Enemy meaning to kill them, *one* may, by ſhutting a Gate or drawing a Bridge after him, ſecure *himſelf*, and leave the *other* in great Probability of *loſing* his Life, ſuppoſing it not to be poſſible to ſave *both*.

L. N. N. l. 2. c. 6. § 4.

XXIX. *Another deſtroyed or hurt to the ſame end.*

(IV.) CASES alſo of *Neceſſity* may happen, where one may *indirectly* put another in Danger of *Death*, or ſome *great* Miſchief, when at the ſame time he means no harm to the Perſon; but only, for his own *Preſervation*, he is forced upon ſome Action which probably may do the other a Damage; always ſuppoſing that he had rather have choſen any *other* Way, if he could have found it, and that he make that Damage as *little* as he can. Thus, if a ſtronger Man than I purſues me to take away my Life, and one meets me in a narrow Way thro' which I muſt flee, if, upon my Requeſt, he will not ſtand out of the Way, or he has not time or room ſo to do, I may throw him down and go over him, tho' it be very likely that by the Fall he will be very much hurt; except he ſhould be one

who

who has ſuch peculiar Relation to me, [ſuppoſe my *Parent*, *King*, &c.] that I ought for his Sake rather to ſurrender my ſelf to the Danger. And if he who is in the Way cannot, upon my ſpeaking to him, get out of the Way, ſuppoſe being lame or a Child, I ſhall be excuſed who try to leap over him, rather than to expoſe my ſelf to my Enemy by delaying. But if any one ſhall, out of *Wantonneſs* or *croſs Humour*, hinder me or deny to give me the Liberty of eſcaping, I may immediately by any Violence throw him down, or put him out of my Way. And thoſe who in theſe Caſes get any *Harm*, are to look upon it not as a *Fault* in the Perſon that did it, but as an unavoidable *Misfortune*.

XXX. *Caſe of extreme Want.* L. N. N l. 2. c. 6. § 5.

(V.) IF a Man, not through his own Fault, happen to be in *extreme Want of Victuals and Cloaths* neceſſary to preſerve him from the Cold, and cannot procure them from thoſe who are wealthy and have great Store, either by Intreaties, or by offering their Value, or by propoſing to do Work equivalent; he may, without being chargeable with *Theft* or *Rapine*, furniſh his Neceſſities out of their Abundance, either by force or ſecretly, eſpecially if he do ſo with a Deſign to pay the Price, as ſoon as he ſhall have an Opportunity. For it is the Duty of the *opulent* Perſon to ſuccour another who is in ſuch a *needy* Condition. And tho' regularly what depends upon *Courteſie* ought by no means to be extorted by *Force*, yet the *Extreme Neceſſity* alters the Caſe, and makes theſe Things as *claimable*, as if they were ablolutely *due* by a formal Obligation. But it is firſt incumbent upon the Neceſſitous Perſon to try all Ways to ſupply his Wants with the *Conſent* of the Owner, and he is to take care that

the Owner be not thereby reduced to the *ſame Extremity*, nor in a little time like to be ſo; and that *Reſtitution* be made; * eſpecially if the Eſtate of the other be ſuch as that he cannot well bear the Loſs.

XXXI. *Deſtroying other Men's Goods to ſave our own.* L. N. N. l. 2. c. 6. § 8.

(VI.) LASTLY, the *Neceſſity* of our own Affairs ſeems ſometimes to juſtifie our deſtroying the *Goods of other Men*; 1. Provided ſtill, that we do not bring ſuch Neceſſity upon our ſelves by our *own Miſcarriage:* 2. That there cannot be any *better* Way found: 3. That we caſt not away that of our Neighbours which is of *greater Value*, in order to ſave our own which is of *leſs:* 4. That we be ready to pay the *Price*, if the Goods would not otherwiſe have been deſtroyed, or to bear our ſhare in the Damage done, if the Caſe were ſo that *his* muſt have periſhed together with *ours*, but now by the Loſs of them *ours* are preſerved. And this ſort of Equity is generally found in the *Law*-Merchant. Thus in caſe of *Fire*, I may pull down or blow up my Neighbour's Houſe, but then thoſe whoſe Houſes are by this means ſaved, ought to make good the Damage proportionably.

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* See *Grotius de Jure Belli & Pacis, lib.* 2. *cap.* 3. § 6. *lib.* 3. *cap.* 17. § 1, 2. *ſeq.*

CHAP.

CHAP. VI.

Of the Duty of one Man to another, and firſt of doing no Injury to any Man.

I. *Reciprocal Duties of two Sorts.*

WE come now to thoſe Duties which are to be practis'd by *one Man towards another.* Some of theſe proceed from that *common Obligation* which it hath pleas'd the Creator to lay upon all Men in general; others take their Original from ſome certain *Human Inſtitutions*, or ſome *peculiar*, * *adventitious* or accidental *State* of Men. The *firſt* of theſe are *always* to be practis'd by *every* Man towards *all* Men; the *latter* obtain only among thoſe who are in ſuch *peculiar* Condition or State. Hence thoſe may be called *Abſolute*, and theſe *Conditional Duties.*

II. *No wrong to be done.* L. N. N. l. 3. c. 1.

AMONG thoſe Duties we account *Abſolute*, or thoſe of every Man towards every Man, this has the firſt Place, † that *one do no Wrong to the other*; and this is the *ampleſt* Duty of

* This *Status adventitius* is that State of Life we come into in conſequence of ſome Human Conſtitution; whether we enter into it at our Birth immediately, or whether it happens after our Birth. Such are, for example, all thoſe Conditions of Life where the Duties and Relations are reciprocal; ſuch as a *Parent* and his *Child*, an *Husband* and a *Wife*, a *Maſter* and a *Servant*, a *Sovereign* and his *Subject*. &c.

† See *Grotius de Jure Belli & Pacis, lib.* 2. and the whole 17th Chapter.

all

all, comprehending *all Men* as ſuch; and it is at the ſame time the *moſt eaſy*, as conſiſting only in an *Omiſſion* of acting, unleſs now and then when unreaſonable Deſires and Luſts are to be *curb'd*. It is alſo the *moſt neceſſary*, becauſe without it *Human Society* cannot be preſerv'd. For I can live *quietly* with him that does me *no Good*, or with whom I have no manner of Correſpondence, provided he doth me *no Harm*. Nay this is all we deſire from the *greateſt Part* of Mankind; the doing mutually *good Offices* lying but among a few. But I can by no means live *peaceably* with him that *wrongs* me; Nature having inſtilled into every Man ſuch a tender Love of *himſelf* and what is his *own*, that he cannot but by all poſſible means *repel* thoſe Men who ſhall make any Attempt upon one or t'other.

III. *So to do a Crime.* By this Duty are fenced not only what we have by the Bounty of *Nature*; ſuch as our Laws, Bodies, Limbs, Chaſtity, Liberty; but whatſoever by any *Human Inſtitution* or *Compact* becomes our Property; ſo as by this it is forbidden to take away, ſpoil, damage, or withdraw, in whole or in part, from our Uſe, whatſoever by a lawful Title we are poſſeſs'd of. Whence all thoſe Actions are hereby made Crimes, by which any Wrong is done to others, as Murther, Wounding, Striking, Rapine, Theft, Fraud, Violence, whether practis'd directly or indirectly, mediately or immediately, and the like.

IV. *Reparation of* Farther, hence it follows, That *if any Harm or Damage be done to another, he who is truly chargeable as Author of the Wrong, ought,*

as

as far as in him lies, to make Reparation: For otherwiſe the Precept would be to no purpoſe, That no Man ſhall be hurt nor receive damage; if when he has actually ſuſtain'd a Miſchief, he muſt put it up quietly, and he who did the Injury ſhall enjoy *ſecurely* the Fruit of his Violence without *Reparation.* And ſetting aſide this *Neceſſity of Reſtitution,* the Pravity of Man's Nature is ſuch, that they would never forbear *injuring* one another, and it would be very hard for him who has ſuffered Wrong, to compoſe his Mind ſo as to live peaceably [redacted] the other, till *Reparation* were made. *Wrong a neceſſary Conſequence from thence.*

THO' the Word *Damage* may ſeem properly to belong to Loſs in Goods, yet we take it here in the large Senſe, that it may ſignifie all Manner of *Harm, ſpoiling, diminiſhing,* or *taking away* what is already ours, or *intercepting* that which by an *abſolute Right* we ought to have, whether it be beſtowed upon us by Nature, or given us by Man and Human Laws; or laſtly, the *Omiſſion* or *Denial* of paying what by a *perfect Obligation* is due to us. But if *ſuch* Payment only be ſtopt, as was *not due* by any *perfect Obligation,* it is not looked upon as a Damage that ought to be made good: For it would be unmeet to account it a *Wrong* ſuffered if I receive not ſuch Stipends; and unreaſonable for me to demand as my *Right,* what I cannot expect from another but under the name of a *Free Gift,* and which I can by no means call *my own,* till after I have received it. V. *Damage how to be accounted.* L. N. N. l. 3. c. 1. § 3.

UNDER the Head of *Damage* liable to Reparation, we muſt alſo compriſe not only a Miſchief, Loſs or Interception of what is ours or due to us; but alſo ſuch *Profits* as do naturally accrue VI. *Damage in expectations.*

crue from the Thing, or have already accrued, or may fairly be *expected*, if it was the Right of the Owner to receive them; allowing ſtill the Expences neceſſary for gathering in ſuch Profits. Now the Value of *Profits*, thus in *Expectation* only, is to be high or low, according as they are certain or uncertain, and will be ſooner or later received. And laſtly, that alſo is to be called *Damage*, which upon a Hurt given, does of Natural Neceſſity *follow* thereon.

VII. *Damage mediately or immediately done.* L. N. N. l. 3. c. 1. § 4.

ONE Man may damnifie another not only *immediately* or by *himſelf*, but alſo by *others*: And it may happen that a Damage immediately done by *one Man* may be chargeable upon *another*, becauſe he contributed ſomewhat to the Action, either by doing what he ought not, or not doing what he ought to have done. Sometimes among *ſeveral Perſons* who concurred to the ſame Fact one is to be accounted the *Principal*, others but *Acceſſaries*; ſometimes they may all be *equally Parties*. Concerning whom it is to be obſerved, that they are ſo far obliged to *repair* the Wrong as they were indeed the *Cauſes* thereof, and by ſo much as they contributed to doing *All* or *Part* of the Damage. But where any one did not actually aſſiſt in the Treſpaſs committed; nor was antecedently a Cauſe of its being done, nor had any Advantage by it; there, though upon Occaſion of the Injury done, he may be *blame worthy*, yet he cannot be any ways obliged to *Reſtitution*: And of this Sort are ſuch as *rejoyce* at their Neighbour's Misfortunes, ſuch as *commend* the Commiſſion of Outrages, or are ready to *excuſe* them, who *wiſh* or *favour* the Practice of them, or who *flatter* the Actors therein.

WHERE *many* have joined in an Action from whence Damage has come, he in the *firſt* place ſhall be chargeable with *Reparation*, by whoſe *Command* or powerful *Influence* the others were put upon the Action; and he who immediately perpetrates the Thing, to which he could not decline his helping Hand, ſhall be eſteemed but only as the *Inſtrument*. He who *without any conſtraint* concerned himſelf in the Enterprize ſhall be *chiefly liable*, and then the reſt who aſſiſted in it. But this ſo, as that if *Reſtitution* be made by the former, then the latter are cleared, (which in *Penal Caſes* is otherwiſe.) If *many in Combination* have committed an Injury, all are obliged for each one ſingle, and each one ſingle is obliged for all; ſo as that if *all* are ſeized, they muſt each pay their Shares to make good the Loſs; and if all eſcape but *one*, he ſhall be obliged to pay for all; but where ſome amongſt them are *inſolvent*, thoſe who are *able* muſt pay the Whole. If many, *not in Combination*, concur to the ſame Thing, and it can plainly be diſcerned *how much* each of them contributed to the doing of the Miſchief; each ſhall only be accountable for ſo much as *himſelf* was the Cauſe of. But if *one ſhall pay* the whole, they are *all diſcharged* for the ſame.

VIII. *Damage done by many.* L. N. N. l. 3. c. 1. § 5.

NOT only he who out of an *evil Deſign* does wrong to another, is bound to Reparation of the Damage, but he who does ſo thro' *Negligence* or *Miſcarriage*, which he might eaſily have avoided. For it is no inconſiderable Part of *ſocial Duty*, to manage our Converſation with ſuch *Caution* and *Prudence*, that it does not become *miſchievous* and *intolerable* to others; in order to which, Men under ſome Circumſtances and

IX. *Damage by Negligence.* L. N. N. l. 3. c. 1. § 6.

and Relations, are obliged to more exact and watchful *diligence:* The ſlighteſt Default in this point is ſufficient to impoſe the Neceſſity of *Reparation*; unleſs the Fault lay rather more in him who was harmed, than in him who did it; or unleſs ſome great Perturbation of Mind, or ſome Circumſtance in the Matter, would not allow the moſt deliberate Circumſpection; * as, when a Soldier in the Heat of Battle in handling his Arms ſhall hurt his Comrade.

X. *Damage by Chance.* BUT he who by *meer Chance*, without any Fault of his own, ſhall do Harm to another, is not obliged to *Reparation.* Becauſe nothing in this Caſe being done which can be chargeable upon him, † there is no Reaſon, why he who *unwillingly* did a Miſchief ſhould rather ſuffer, than he to whom it was done.

XI. *Damage by a Vaſſal.* IT is alſo agreeable to Natural Equity, if *my Vaſſal*, though not by my Deſire, do Wrong to another, that either I make it good, or ſurrender *him* to the Party injured. For 'tis true, this *Vaſſal* is *naturally obliged* to Reparation; but he not having wherewith, and his Body being the *Property* of his Patron, it is but juſt that ſuch Patron either *repair* the Loſs ſuſtained, or *deliver* him up. Otherwiſe ſuch a Bond-man would be at liberty to do what Miſchief he liſted, if Amends cannot be had from *him*, becauſe he is the Owner of nothing, no not of the Body he bears; nor from his *Patron.* For, let him beat the Slave never ſo ſeverely, or puniſh him with the cloſeſt impriſonment,

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* See *Grotius de Jure Belli & Pacis, lib.* 3. *c.* 1. § 4.

† See *Grotius de Jure Belli & Pacis, lib.* 3. *c.* 1. § 5.

that

that gives *no Reſtitution* to the Perſon wronged.

XII. *Damage by Cattle.*

THE ſame ſeems to be juſt in the Caſe of our *Cattle* or any *living Creature* we keep, that, when they *againſt* our Wills and by a Motion of their own, contrary to their *Natures*, do a Miſchief to another, we either make *Reparation*, or *give up* the ſame. For if I am hurt by any Animal that lives in its *Natural Liberty*, I have a Right, by what means I can, to give my ſelf Satisfaction by *taking* or by *killing* it; and this Right doubtleſs cannot be taken away by its being in the Poſſeſſion of another. And whereas the Owner of this Animal makes ſome *Gain* by it, but I have ſuffered *Loſs* by the ſame; and whereas the *Reparation* of *Wrong* is more to be favoured than procuring *Gain*; it appears that I may with reaſon demand Satisfaction from the *Owner*, or if the Animal be not worth ſo much, then that *it* at leaſt be delivered to me on Account of the Damage ſuſtained.

XIII. *Recapitulation.*

THUS then, he who without any *evil Intention* does an Injury to another, ought of his own accord to offer *Reparation*, and to proteſt himſelf to have done it *unwillingly*, leſt the injured Perſon take him for his *Enemy*, and endeavour to *retaliate* the Miſchief. But he, who with a *naughty deſign* ſhall wrong his Neighbour, is not only bound to offer *Reparation*, but to declare his *Repentance* for the Fact and to beg *Pardon*. On the other ſide, the *wronged Party* having Satisfaction made him, is obliged, upthe *Repentance* of the other, and at his *Requeſt*, to grant him *Pardon*. For he that will not be content when *Reparation* is made him, and a fit

ſit *Submiſſion* offered, but ſtill ſeeks to revenge himſelf by Force, does nothing elſe but gratifie his own ill Nature, and ſo diſturbs the common Peace of Men without cauſe. And upon that account *Revenge* is by the *Law of Nature* condemned, as propoſing no other End, than doing Miſchief to thoſe who have hurt us, and pleaſing our ſelves in their Sufferings. Moreover, there is great Reaſon that Men ſhould be the more apt to pardon *each others* Offences, upon a conſideration how often themſelves tranſgreſs the *Laws of God*, and have therefore daily ſo much need of begging Forgiveneſs of *Him*. [Not ſtill but that the *Publick* may inflict a *Puniſhment* on the Aggreſſor, tho' he have given ſatisfaction to the *Private* Man, if the Act was *Criminal*, and in its Nature *Evil*.]

CHAP.

CHAP. VII.

The Natural Equality of Men to be acknowledged.

I. *Equality of Mankind.*

MAN is a Creature not only moſt ſollicitous for the *Preſervation* of Himſelf; but has of Himſelf alſo ſo nice an *Eſtimation* and *Value*, that to diminiſh any thing thereof does frequently move in him as great Indignation, as if a Miſchief were done to his *Body* or *Eſtate*. Nay, there ſeems to him to be ſomewhat of *Dignity* in the Appellation of **Man**: ſo that the laſt and moſt efficacious Argument to curb the Arrogance of inſulting Men, is uſually, *I am not a Dog, but a Man as well as your ſelf.* Since then Human Nature is the *ſame* in us all, and ſince no Man will or can cheerfully join in Society with any, by whom he is not at leaſt to be eſteemed equally as a Man, and as a Partaker of the ſame Common Nature: It follows that, among thoſe *Duties which Men owe to each other*, this obtains the *ſecond* Place, That *every Man eſteem and treat another, as* naturally *equal to himſelf, or as one who is a Man as well as he.* L. N. N. l. 3. c. 2. § 1.

II. *Wherein this Equality conſiſts.*

Now this *Equality* of Mankind does not alone conſiſt in this, that Men of ripe Age have almoſt the ſame *Strength*, or if one be weaker, he may be able to kill the ſtronger, either by *Treachery*, or *Dexterity*, or by being better furniſhed with *Weapons*; but in this, that though Nature may have accompliſhed one Man be- L. N. N. l. 3. c. 2. § 2.

yond another with various Endowments of Body and Mind; yet nevertheleſs he is obliged to an Obſervation of the *Precepts* of the *Law Natural* towards the meaner Perſon, after the ſame manner as *himſelf* expects the ſame from *others*; and has not therefore any greater Liberty given him to inſult upon his Fellows. As on the other ſide the Niggardlineſs of *Nature* or *Fortune* cannot of themſelves ſet any Man ſo low, as that he ſhall be in worſe Condition, as to the Enjoyment of *Common Right*, than others. But what *one Man* may rightfully demand or expect from *another*, the ſame is due to *others* alſo (Circumſtances being alike) from *him*; and whatſoever *one* ſhall deem reaſonable to be done by *others*, the like it is moſt juſt he practiſe *himſelf*: For *the Obligation of maintaining Sociality among Mankind equally binds every Man*; neither may one Man more than another violate the *Law of Nature* in any part. Not but that there are other *popular Reaſons* which illuſtrate this *Equality*; to wit, that we are all deſcended of the *ſame Stock*; that we are all born, nouriſhed, and die after the *ſame Manner*; and that God has not given any of us a *certain Aſſurance* that our happy Condition in the World ſhall not at one time or other be *changed*. Beſides, the Precepts of the Chriſtian Religion tell us that God favours not Man for his Nobility, Power, or Wealth, but for *ſincere Piety*, which may as well be found in a *mean* and *humble* Man, as in thoſe of *high degree*.

III. *This Equality ſhould make us*

Now from this *Equality* it follows, *That he who would uſe the Aſſiſtance of others in promoting his own Advantage, ought to be as free and ready to uſe his Power and Abilities for their Service, when*

when they want his Help and Aſſiſtance on the like occaſions. For he who requires that other Men ſhould do him Kindneſſes, and expects *himſelf* to be *free* from doing the like, muſt be of opinion that thoſe other Men are below himſelf and not his *Equals.* Hence as thoſe Perſons are the *beſt Members* of a Community, who without any difficulty *allow* the ſame things to their Neighbour that themſelves *require* of him; ſo thoſe are altogether *uncapable of Society*, who ſetting a high Rate on themſelves in regard to others, will take upon them to act any thing towards their Neighbour, and expect greater Deference and more Reſpect than the Reſt of Mankind; in this inſolent manner demanding a greater portion unto themſelves in thoſe things, to which all Men having a common Right, they can in reaſon claim no larger a Share than other Men: Whence this alſo is an univerſal Duty of the *Law Natural*, *That no Man, who has not a peculiar Right, ought to arrogate more to himſelf, than he is ready to allow to his Fellows, but that he permit other Men to enjoy Equal Privileges with himſelf.*

benevolent, courteous and complaiſant to each other. L. N. N. l. 3. c. 2. § 4.

THE ſame *Equality* alſo ſhews what every Man's behaviour ought to be, when his buſineſs is to *diſtribute Juſtice* among others; to wit, *that he treat them as* Equals, *and indulge not that, unleſs the Merits of the Cauſe require it, to one, which he denies to another.* For if he do otherwiſe, he who is diſcountenanced is at the ſame time affronted and wronged, and loſes ſomewhat of the Dignity which Nature beſtowed upon him. Whence it follows, that Things which are in common, are of right to be *divided* by equal Parts among thoſe who are equal: Where

IV. *It ought to make us obſerve exact Juſtice in diſtributing to each his own.* L. N. N. l. 3. c. 2. § 5.

the Thing will not admit of *Diviſion*, they who are equally concerned, are to uſe it *indifferently*; and, if the Quantity of the Thing will bear it, as *much* as each Party ſhall think fit: But if this cannot be allowed, then it is to be uſed after a *ſtated* manner, and *proportionate* to the Number of the Claimants; becauſe 'tis not poſſible to find out any other Way of obſerving *Equality*. But if it be a Thing of that nature as not to be capable of being *divided*, nor of being poſſeſt in *common*, then it muſt be uſed by *turns*; and if this yet will not anſwer the point, and it is not poſſible the reſt ſhould be ſatisfied by an *Equivalent*, the beſt Way muſt be to determin Poſſeſſion by *Lot*; for in ſuch Caſes no fitter Method can be thought on, to remove all Opinion of Partiality and Contempt of any Party, without debaſing the Perſon whom Fortune does not favour.

V. *This Equality a ſufficient Remedy againſt Pride.* L. N. N. l. 3. c. 2. §. 6.

THE Conſideration of this *Natural Equality* among Men, ought to take from us all *Pride*; a Vice that conſiſts herein, When a Man, without any Reaſon, or, without ſufficient Reaſon, prefers himſelf to others, behaving himſelf contemptuouſly and haughtily towards them, as being in his Eſteem baſe Underlings, unworthy of his Conſideration or Regard. We ſay, *without any Reaſon*. For where a Man is regularly poſſeſt of ſome *Right*, which gives him a Preference to other Men; he may lawfully *make uſe of*, and *aſſert* the ſame, ſo it be without vain Oſtentation and the Contempt of others; as on the contrary every one is with good reaſon to *yield* that *Reſpect* and *Honour* which is *due* to *another*. But for the Reſt, *true Generoſity* has always for its Companion a *decorous Humility*, which

which ariſes from a Reflection on the Infirmity of our Nature, and the Faults, of which our ſelves either have been, or may hereafter be guilty, which are not leſs heinous than thoſe which may be committed by other Men. The Inference we ought to make from hence is, that we do not over-value our ſelves with regard to others, conſidering that *they* equally with us are endowed with a *free Uſe of their Underſtanding*, which they are alſo capable of managing to as *good Purpoſe*; the *regular Uſe* whereof is that alone which a Man can call *his own*, and upon which the *true Value* of Himſelf depends. But for a Man, without any Reaſon, to ſet a high eſteem upon himſelf, is a moſt *ridiculous Vice*; firſt, becauſe 'tis in it ſelf *ſilly*, for a Man to carry it high for nothing at all; and then, becauſe I muſt ſuppoſe all *other Men* to be Coxcombs, if I expect from them a great Regard, when I deſerve none.

VI. *And againſt rude unmannerly and contemptuous Behaviour.* *L. N. N. l. 3. c. 3. § 7.*

The Violation of this Duty is yet carried farther, if a Man ſhew his *Contempt* of another by outward Signs, Actions, Words, Looks, or any other abuſive way. And this Fault is therefore the more grievous, becauſe it eaſily excites the Spirits of Men to Anger and Revenge: So that there are many who will rather venture their *Lives* upon the ſpot, much more will they break the Publick Peace, than put up an *Affront* of that nature; accounting that hereby their Honour is wounded, and a Slur is put upon their Reputation, in the untainted Preſervation of which conſiſts all their *Self-ſatisfaction* and *Pleaſure* of Mind.

CHAP. VIII.

Of the mutual Duties of Humanity.

I. *Doing good to others.* L. N. N. l. 3. c. 3.

AMONG the Duties of one Man towards another, which muſt be practis'd for the ſake of *Common Society*, we put in the *third* place this, *That every Man ought to promote the Good of another, as far as conveniently he may.* For all Mankind being by Nature made, as it were, *akin* to each other; ſuch a Relation requires more than barely abſtaining from offering Injury and doing Deſpight to others. It is not therefore ſufficient that we neither hurt nor deſpiſe our Fellows, but we ought alſo to do ſuch *good Offices* to others, or mutually to communicate the ſame, as that common *brotherly Love* may be kept up among Men. Now we become beneficial to our Neighbour, either *indefinitely* or *definitely*; and *that* either parting with *ſomething* or *nothing* our ſelves.

II. *Benefactors of the firſt Sort.* L. N. N. l. 3. c. 3. § 2.

THAT Man *indefinitely* promotes the Good of others, who takes ſuch neceſſary care of his *Mind* and *Body*, that he may be able to perform ſuch Actions as may be profitable to his Neighbour; or who by the *Acuteneſs* of his *Wit* finds out ſomething that may be of Advantage to Mankind. So that thoſe are to be accounted guilty of a *Breach* of this Duty, who betaking themſelves to no *honeſt Calling* ſpend their Lives in Sloth, as if their Souls were given them but to ſerve as Salt to keep their Bodies from ſtinking, or as if they were born but to make up a Number,

ber, and eat their Share: And ſuch as, being *content* with the Eſtates their *Anceſtors* have left 'em, think they may give themſelves up to *Idleneſs* without blame, becauſe they have whereon to live by the Induſtry of others: And thoſe who *alone* enjoy what they have got, not beſtowing any Part upon others: Finally, all thoſe who, like Hogs, do Good to no one till they *die*; and all that Sort of Wretches who only ſerve to load the Earth with their uſeleſs Weight.

III. *Such deſerve Honour as make themſelves uſeful to the Publick.* L. N. N. l. 3. c. 3. § 3.

On the other ſide, to thoſe who make it their Buſineſs to deſerve well of Mankind, the Reſt of the World *owe* thus much, that they don't envy 'em, nor lay any Rubs in their way, while by their noble Actions they ſeek the Univerſal Good: And if there be no Poſſibility for themſelves to *imitate* 'em, they at leaſt ought to pay a *Regard* to their *Memory* and promote their *Honour*, which perhaps is all they ſhall get by their Labours.

VI. *Good done to others without any charge or coſt to the Benefactor.*

Now *not to do* readily all that *Good* to others which we can do without Detriment, Labour, or Trouble to our ſelves, is to be accounted deteſtable *Villany* and *Inhumanity*. The following are wont to be called *Benefits which coſt nothing*, or which are of Advantage to the Receiver, without being a Charge to the Beſtower. Such as, to allow the Uſe of the running Water; the letting another light his Fire by mine; the giving honeſt Advice to him that conſults me; the friendly Directing a wandring Man to the right Way, and the like. So, if a Man have a mind to quit the Poſſeſſion of a Thing, either becauſe he has too much, or becauſe the keeping of it becomes

troubleſome, why ſhould he not rather leave it fit for Uſe to others, (provided they are not Enemies) than to mar or deſtroy it? Hence it is a Sin for us to *ſpoil Victuals*, becauſe our *Hunger* is ſatisfied; or to *ſtop up*, or cover a *Spring*, becauſe we have quenched *our Thirſt*, or to deſtroy *Buoys* ſet up to diſcover Shelves and Sands, or * *Mercuries* in Roads, when our ſelves have made uſe of them. Under this Head may be comprehended alſo the *little Alms* beſtow'd by the Wealthy upon thoſe who are in Want; and that *Kindneſs* which we juſtly ſhew to *Travellers*, eſpecially if under Neceſſities, † and the like.

* Inſcribed Poſts ſet up in Highways to direct Travellers.

V. *Good done to others with an Expence to the Benefactor.* L. N. N. l. 3. c. 3. § 15.

But it is a higher Degree of Humanity, out of a ſingular Favour *to do a good Turn freely*, which coſts either *Charge* or *Pains*, that ſo another may either have his Neceſſities relieved, or acquire ſome conſiderable Advantage. And theſe, by way of Excellence, are called *Benefits*, and are the fitteſt Matter for rendring Men Illuſtrious, if rightly tempered with Prudence and Magnanimity. The *Diſpenſation* of which, and the *Manner*, are to be regulated according to the *Condition* of the *Giver* and *Receiver*. Wherein Care is firſt of all to be taken; 1. *That the Bounty we are about to exerciſe do not* more Hurt *than* Good *to the Perſon to whom we deſign a Kindneſs, and to others:* Next, 2. *That our Bounty be not* greater *than conſiſts with our Ability:* Then, 3. *That the* Worthineſs *of Men be regarded in our Diſtri-*

† See *Grotius de Jure Belli & Pacis, lib.* 2. *cap.* 2. § 11, 12. *ſeq.*

bution,

bution, and Preference given to the Well-deſerving. We muſt therefore conſider *how far* each ſtands in need of our Help, and obſerve the Degrees of *Relation* among Men; moreover, 'tis to be obſerv'd *what* every one wants moſt, and what they can or cannot compaſs *with* or *without* our *Aſſiſtance*. * The *Manner* alſo of exerciſing Acts of Kindneſs will render them more acceptable, if they be done *chearfully*, *readily*, and *heartily*.

VI. *Gratitude.* L. N. N. l. 3. c. 3. § 6.

And then he who *receives* a Benefit ought to have a *grateful Mind*, by which he is to make it manifeſt, that it was *acceptable* to him, and that for its ſake he has a *hearty Reſpect* to the Donor, and that he wants nothing but an *Opportunity* or an *Ability* of making, if poſſible, a *Requital* of the full value or more. For it is not abſolutely neceſſary that the Returns we make be *exactly tantamount* to the Courteſy we receive, but our *Good-will* and *hearty Endeavour* are in lieu to be accepted. Not but that ſometimes he who pretends to have done me a Kindneſs, may, notwithſtanding, have no Reaſon to ſay, he has *obliged* me thereby; as if a Man ſhall drag me out of the Water, into which he puſhed me before; in ſuch a Caſe I owe him no thanks.

VII. *Thanks.*

Now by how much the more *Benefits* are apt to oblige and place Engagements on the Minds of Men, by ſo much ought the Party who is *beholden* to be the more eager to return his *Thanks*. If it be but becauſe we ought not

* *Grotius de Jure Belli & Pacis, Lib. 2. Cap. 5.* § 10.

to

to ſuffer our Benefactor, who out of a good Opinion he had of us has done us a Kindneſs, to think worſe of us; and becauſe we ſhould not receive any Favour, but with a Deſign to endeavour, that the Giver ſhall never have Cauſe to repent of what he has done for us. For, if for any particular Reaſon we are not willing to be beholden to ſuch or ſuch a Man, we may civilly *avoid* the Accepting of the *Courteſy*. And truly if no grateful Returns were to be made upon the Receipt of Benefits, it would be unreaſonable for any Man to caſt away what he has, and to do a good Turn where beforehand he is ſure it will be ſlighted. By which means all Beneficence, Good-Will, and Brotherly-Love would be loſt among Men; and there would be no ſuch things as doing *Kindneſſes frankly*, nor any Opportunities of procuring *mutual Friendſhips*, left in the World.

VIII. *Ingratitude.* L. N. N. l. 3. c. 3. § 17.

And though the *ungrateful Man*, cannot be preciſely ſaid to do a *Wrong*; yet the Charge of *Ingratitude* is look'd upon as more baſe, more odious, and deteſtable than that of *Injuſtice*; becauſe 'tis judged a Sign of an *abject* and *raſcally Soul* for a Man to ſhew himſelf unworthy of the good Opinion, which another had entertain'd of his Probity, and not to be mov'd to ſome Senſe of Humanity by *Benefits*, which have a Power to tame even the Brutes. But, let *Ingratitude* be never ſo abominable, yet ſimply conſidered, as it is a bare *Forgetting* of a Courteſy, and a *Neglect* of making a due Return upon occaſion, Courts of Judicature take no cognizance of it; for it would loſe the Name of *Bounty*, if it were redeman-

redemandable by Law, as Money lent is; becauſe then it would be a *Credit.* And whereas it is a high Inſtance of *Generoſity* to be grateful, it would ceaſe to be a *generous* Action, when ſo to do could not be avoided. Beſide that it would take up the Buſineſs of all Courts, by reaſon of the great Difficulty in making an Eſtimate of all the Circumſtances, which either would enhance or leſſen the Benefit: And that it was to this End I beſtow'd it, (to wit, that I did not therefore demand a Promiſe of Repayment,) that ſo the other might have an Occaſion of ſhewing his Gratitude, not for Fear of Puniſhment, but out of Love to Honeſty; and to manifeſt, that it was not in Hopes of Gain, but only out of mere Kindneſs that I was liberal of that, which I would not take care ſhould be reimburs'd to me. But for him who improves his *Ingratitude*, and not only gives no thanks to, but injures his Benefactor; * this ſhall cauſe an *Aggravation* of his *Puniſhment*, becauſe it plainly demonſtrates the profligate Villany and Baſeneſs of his Mind.

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* See *Grotius de Jure Belli & Pacis, Lib. 2, Cap. 20. § 20.*

CHAP.

CHAP. IX.

The Duty of Men in making Contracts.

I. *Contracts.* FROM the Duties *Abſolute* to thoſe that are *Conditional* we muſt take our *Paſſage*, as it were, through the *intermediate Contracts*; for, ſince all Duties, except thoſe already mentioned, ſeem to preſuppoſe ſome Covenant either expreſsed or implied; * we ſhall therefore in the next place treat of the *Nature of Contracts*, and what is to be obſerved by the Parties concerned therein.

II. *The Neceſſity of of 'em.* NOW it is plain that *it was abſolutely neceſſary for Men to enter into mutual Contracts.* For though the Duties of *Humanity* diffuſe themſelves far and near thro' all the Inſtances of the Life of Man; yet *that* alone is not Ground ſufficient, whereon to fix all the Obligations which may be neceſſary to be made *reciprocal* between one and another. For all Men are not endowed with ſo much Good Nature as that they will do all good Offices to every Man out of *meer Kindneſs*, except they have ſome certain Expectation of receiving the *like* again: And very often it happens, that the Services we would have to be done to us by *other Men* are of that Sort, that we cannot with *Modeſty* deſire them. Frequently alſo, it may not *become* one of my Fortune,

* Compare herewith the whole Eleventh Chapter of the Second Book of *Grotius de Jure*, &c.

or

or in my Station, to be *beholden* to another for ſuch a Thing. So that many times another cannot give, neither are we willing to accept, unleſs that other receive an *Equivalent* from us; and it happens not ſeldom, that my Neighbour *knows not* how he may be ſerviceable to my occaſions. Therefore, that theſe *mutual good Offices*, which are the Product of *Sociality*, may be more freely and regularly exerciſed, it was neceſſary that Men ſhould agree among themſelves, concerning what was to be done on this ſide and on that, which no Man from the *Law of Nature* alone could have aſſured himſelf of. So that it was beforehand to be adjuſted what, this Man doing *ſo* by his Neighbour, he was to expect *in lieu* of the ſame, and which he might lawfully *demand*. This is done by means of *Promiſes* and *Contracts*.

III. *Veracity.* L. N. N. l. 3. c. 4. § 2.

WITH reſpect to this general Duty it is an Obligation of the *Law of Nature*, that *every Man keep his Word*, or fulfil his Promiſes and make good his Contracts. For without this, a great Part of that Advantage, which naturally accrues to Mankind by a *mutual Communication* of good Offices and uſeful Things, would be loſt. And were not an exact Obſervance of one's Promiſe *abſolutely neceſſary*, no Man could propoſe to himſelf any *Certainty* in whatever he deſign'd, where he muſt depend upon the Aſſiſtances of *others*. Beſides that Breach of Faith is apt to give the juſteſt Occaſions to Quarrels and Wars. For if, according to my Agreement, I perform my Part, and the other falſifie his Word, whatſoever I have *done* or *depoſited* in Expectation of his Performance, is *loſt*. Nay, though I have done *nothing* as yet, yet it may be a Miſchief

chief for me by this Diſappointment to have my *Affairs* and *Purpoſes confounded*, which I could have taken care of ſome other way, if this Man had not offered himſelf. And there is no reaſon I ſhould become ridiculous, only for having truſted one whom I took to be an honeſt and a good Man.

IV. *Diſtinction between what is due on Courteſy or Humanity, and what by particular Contract or Promiſe.* L. N. N. l. 3. c. 4.

BUT it is to be obſerved, that ſuch Things as are due to me only of *Courteſie*, differ from thoſe which I can claim on account of a *Contract* or *Promiſe*, in this reſpect chiefly: That, 'tis true, I may fairly deſire the honeſt Performance of the *firſt*: But then, if the other ſhall neglect my Requeſt, I can only charge him with *Rudeneſs*, *Cruelty* or *hard dealing*; but I cannot *compel* him to do me reaſon either by my own Power or by any ſuperior Authority. Which I am at liberty to do in the *latter* Caſe, if that be not freely performed which ought to have been according to an *abſolute Promiſe* or *Covenant*. * Hence we are ſaid to have an *imperfect Right* to thoſe things, but to theſe our Claim is *perfect*; as alſo that to the Performance of the *firſt* we lie under an *imperfect*, but to the *other* under a *perfect* Obligation.

V. *Obligations different.* L. N. N. l. 3. c. 5.

OUR Word may be given, either by a *ſingle Act*, where one Party only is obliged; or by an *Act reciprocal*, where more than one are Parties. For ſometimes *one Man* only binds himſelf to do ſomewhat; ſometimes *two* or *more* mutually engage each other to the Performance of ſuch and ſuch things. The former whereof is called a *Promiſe*, the latter a *Covenant* or *Contract*.

* See *Grotius de Jure Belli & Pacis. Lib.* 1. *cap.* 1. § 4. *ſeqq.*

PROMISES

PROMISES may be divided into *imperfect* and *perfect*. The former is, when we mean indeed to be obliged to make good our Word to him to whom we promiſe; but we intend not to give him a Power of *requiring* it, or of making uſe of force to compel us to it. As, if I ſay thus, I really deſign to do this or that for you, and I deſire you'll believe me. Here I ſeem more obliged by the Rules of *Veracity* than of *Juſtice*; and ſhall rather appear to have done the promiſed Service out of a Regard to *Conſtancy* and *Diſcretion*, than to *Right*. Of this Sort are the Aſſurances of great Men who are in favour, whereby they *ſeriouſly*, but not upon their *Honours*, promiſe their Recommendation or Interceſſion, their Preferring a Man, or giving him their Vote, which yet they intend ſhall not be demanded of them as Matters of *Right*, but deſire they may be wholly attributed to their *Courteſie* and *Veracity*; that the Service they do may be ſo much the more acceptable, as it was uncapable of *Compulſion*. VI. *Promiſes imperfect.* L. N. N. l. 3. c. 5. § 6.

BUT this is called a *perfect Promiſe*, when I not only oblige my ſelf by my Word, but I give the other Party Authority to *require* at my hands the Performance of what I ſtipulated, as if 'twere a Debt. VII. *Promiſe perfect.*

MOREOVER, that *Promiſes* and *Contracts* may have a full Obligation upon us to *give* and to *do* ſomewhat, which before we were at liberty *not* to have done; or to *omit* that which we had a Power to *do*, 'tis eſpecially requiſite that they be made with our *free Conſent*. For whereas the making good of any *Promiſe* or *Contract* may be accompanied with ſome *Inconvenience*, there can be no readier Argument why we ſhould VIII. *No Obligation where the voluntary Conſent of Parties is wanting.* L. N. N. l. 3. c. 6.

not

not *complain*, than that we *conſented* thereto of our own accord, which it was in our power not to have done.

IX. *Conſent expreſs or tacit.* L. N. N. l. 3. c. 6. § 16.

And this * *Conſent* is uſually made known by outward *Signs*, as, by *Speaking*, *Writing*, a *Nod*, or the like; tho' ſometimes it may alſo be plainly intimated without any of them, according to the Nature of the thing and other Circumſtances. So *Silence* in ſome Caſes, and attended with ſome Circumſtances, paſſes for a *Sign* expeſſing *Conſent*. To this may be attributed thoſe *tacit Contracts*, where we give not our formal Conſent by the Signs generally made uſe of among Men; but the Nature of the Buſineſs, and other Circumſtances make it fairly ſuppoſable. Thus frequently in the principal Contract, which is *expreſs*, another is included which is *tacit*, the Nature of the Caſe ſo requiring: And it is uſual, in moſt Covenants that are made, that ſome *tacit Exceptions* and *imply'd Conditions* muſt of neceſſity be underſtood.

X. *Who capable of giving Conſent.* L. N. N. l. 3. c. 6. § 4.

But to render a Man capable of giving a valid *Conſent*, 'tis abſolutely requiſite, that he have ſo far the *Uſe of his Reaſon*, as fully to *underſtand* the Buſineſs that lies before him, and to know whether it be *meet* for him, and whether it lie in his *Power* to perform it; and having conſider'd this, he muſt be capable of giving *ſufficient* Indications of his *Conſent*. Hence it follows, that the Contracts and Promiſes of *Ideots* and *Madmen* (except ſuch whoſe Madneſs admits of lucid Intervals) are null and void: And the

* See *Grotius de Jure Belli & Pacis, Lib.* II. *Cap.* 4. § 4. *Lib.* III. *c.* 1. §. 8. *c.* 24. §. 1, 2.

ſame

ſame muſt be ſaid of thoſe of *Drunken Men*, if they are beſotted to that degree as that their Reaſon is overwhelm'd and ſtupify'd. For it can never be accounted a *real* and *deliberate Conſent*, if a Man, when his Brains are diſorder'd and intoxicated, ſhall on a ſudden and raſhly make fooliſh Engagements, and give the uſual Demonſtrations of Conſent, which at *another* time would have *obliged* him: and it would be a Piece of *Impudence* for any Man to exact the Performance of ſuch a Promiſe, eſpecially if it were of any conſiderable weight. But if one Man ſhall lay hold on the *Opportunity* of another's being drunk, and craftily making an *advantage* of his Eaſineſs of Temper under thoſe Circumſtances, ſhall procure any Promiſe from him, this Man is to be accounted guilty of a *Cheat* and *Knavery*: Not but that, if, after the Effects of his Drink are over, he ſhall *confirm* ſuch Promiſe, he ſhall be *obliged*; and this not with regard to what he ſaid when *drunk*, but to his Confirmation when *ſober*. L. N. N. l. 3. c. 6. § 4.

XI. *Conſent in young Perſons.*

As for *Conſent* in *young Perſons*, it is impoſſible for the *Laws Natural* to determine ſo nicely the *exact Time* how long Reaſon will be too weak in them to render 'em capable of making Engagements; becauſe Maturity of Diſcretion appears earlier in ſome than in others; Judgment therefore muſt be made hereof by the *daily Actions* of the *Perſon*. Though this is taken care for in moſt Commonwealths, by *Laws* preſcribing a certain *Term* of years to all in general; and in many Places it is become a commendable Cuſtom to ſet theſe under the *Guardianſhip* of wiſer Men, whoſe Authority muſt be L. N. N. l. 3. c. 6. § 5.

had to any Contracts they make, till the other's youthful Raſhneſs be a little abated. For Perſons of this Age, however perhaps they may well enough underſtand what they do, yet for the moſt part act with too much Vehemence and Raſhneſs; are too free and eaſie in their Promiſes, eager and over confident in their Hopes, proud of being thought generous and liberal, ambitious and haſty in contracting Friendſhips, and not furniſhed with prudent Caution and neceſſary Diffidence. So that he can hardly paſs for an *honeſt* Man, who makes any advantage of the *Eaſineſs* of this Age, and would gain by the *Loſſes* of *young people*, who for want of Experience could not foreſee, or place a true Eſtimate thereon.

XII. *Miſtake in Contracts.* L. N. N. l. 3. c. 6. § 6.

ANOTHER Thing which invalidates *Conſent*, and by conſequence the Promiſes and Pacts that are built upon it, is *Errour* or Miſtake; thro' which it comes to paſs, that the Underſtanding is cheated in its Object, and the Will in its Choice and Approbation. Concerning *Error*, theſe three Rules are deligently to be obſerv'd. (1.) *That when to my Promiſe, ſome* Condition *is ſuppoſed, without the Conſideration whereof I ſhould not have made ſuch Promiſe; the ſame ſhall, without the* other, *have no Obligation upon me.* For in this Caſe the Promiſer does not engage *abſolutely*, but upon a *Condition*, which not being made good, the Promiſe becomes null and void. (2.) * *If I am drawn into a Bargain*

* Provided this Error concerns ſomething eſſential to the Bargain made; that is to ſay, that it does neceſſarily and naturally concern the Affair in hand, or reſpects

gain or Contract by a Miſtake, *which Miſtake I find, before as we uſe to ſay Bulk is broke, or any thing done in order to the Conſummation thereof, it is but Equity that I ſhould be at liberty to retract*; eſpecially if upon the Contract making, I plainly ſignify'd for what *Reaſon* I agreed to it; more particularly, if the other Party ſuffers no *Damage* by my going off from my Bargain, or, if he does, that I am ready to make *Reparation.* But when, as was ſaid afore, Bulk is broke, and the *Miſtake* is not found till the Covenant is either wholly or in part already performed, the Party who is under an Errour cannot retract, any farther than the other ſhall of *Courteſy* releaſe to him. (3.) *When a* Miſtake *ſhall happen concerning the* Thing, *which is the* Subject *of the Contract, ſuch Contract is in-*

ſpects plainly the Intention of thoſe who contract, notified ſufficiently at ſuch time as the Contract was made: And on both Sides allowed as a Reaſon without which ſuch Contract had never been made; otherwiſe, as the Errour had no Influence on the Contract to be made, ſo can it not diſannul it when made, whether it be executed or not. An Example will make the meaning hereof plain. Suppoſe I imagin that I have loſt my Horſe and that I ſhall never recover him again; and buy another, which otherwiſe I wou'dn't have done: If I happen afterwards, contrary to Expectation; to find my own again, I can't oblige the Perſon I bought the new one from to take it again, altho' at that time he ſhou'dn't have ſent me the Horſe, or have receiv'd the money agreed for: Unleſs when we bargain'd, I had expreſsly and formally made this a Condition of annulling ſuch Agreement: For without ſuch formal Stipulation, the Agreement ſtands good againſt me, altho' I might (in way of Diſcourſe only) mention, that I would not have bought this Horſe, had I not loſt my other. See *L. N. N. lib.* 3. *c.* 6. § 7. See alſo *Grotius de Jure Belli &c. Pacis, lib.* 3. *cap.* 23. §4.

valid, not for the ſake of the Miſtake, but becauſe the Laws and Terms of the Agreement are not really fulfilled. For in Bargains of this nature, the *Thing* and all its *Qualifications* ought to be known, without which Knowledge a fair Agreement cannot be ſuppoſed to be made. So that he who is like to ſuffer Wrong by any Defect therein, either may throw up his Bargain, or force the other to make the Thing as it ſhould be, or elſe to pay him the Value, if it happen'd through his Knavery or Negligence.

XIII. *Guileful Contracts.* L. N. N l. 3. c. 6. § 8.

BUT if a Man be drawn into a Promiſe or Bargain by the *Craft* and *fraudulent* Means of another; then the Matter is thus to be conſidered. (1.) *If a* third *Man were guilty of the Cheat, and the Party with whom the Bargain is driven was not concerned in it, the Agreement will be valid:* But we may demand of him who practis'd the Knavery, ſo much as we are Loſers by being deceiv'd. (2.) *He who knaviſhly procures me to promiſe or contract with him, ſhall not ſet me under any Obligation.* (3.) *If a Man will indeed come freely with a plain* * Deſign *to drive a Bargain, but in the very* Action *ſhall perceive a Trick put upon him; ſuppoſe in the* Thing *bargain'd for, its Qualities or Value; the Contract ſhall be ſo far naught, as to leave it in the Power of him who is deceiv'd, either to relinquiſh his Bargain, or to require Satisfaction for his Loſs.* (4.) *If unfair Dealing chance to be us'd in ſome things not* eſſential *to the Buſineſs, and which*

* See *Grotius de Jure Belli & Pacis, Lib.* 2. *cap.* 17. § 17

were

were not expreſsly under regard, *this weakens not the Agreement, if, for the* reſt, *it be regularly made*; tho' perhaps *one Party* might have a Secret and ſly Reſpect to ſome ſuch thing, at the very time of driving the Bargain, and cunningly conceal'd ſuch his View till the Contract were perfectly tranſacted.

XIV. *Contracts ſuſpicious.* L. N N. l. 3. c. 6. § 9.

WHENSOEVER *Fear* is to be conſider'd in Promiſes or Bargains, it is two-fold, and may either be call'd a *probable Suſpicion* leſt we ſhould be deceiv'd by another, and this becauſe he is one who is very much addicted to unjuſt Practices, or has ſufficiently intimated his fraudulent Deſign; or elſe a *panic Terror of the Mind*, ariſing from ſome grievous Miſchief threatned, except we make ſuch a Promiſe or Contract. Concerning the firſt Sort of *Fear*, (or *Miſtruſt* rather) theſe Things are to be obſerv'd. (1.) *He who truſts the Engagements of one who is* notoriouſly negligent *of his Word and Troth, acts very imprudently; but, for that Reaſon only can have no Remedy, but ſhall be obliged.* (2.) *When a Bargain is fully made and compleated, and a Man hath no new Reaſons to apprehend any knaviſh Deſigns from the other Party, it ſhall not be ſufficient to invalidate the Agreement that the other was, on other Occaſions before this Agreement, known to have been trickiſh and deceitful.* For ſince our Knowledge of ſuch his former Behaviour did not prevent our making the Agreement with him, it ought not to prevent our making it good to him. (3.) *Where* after *the Bargain made, it appears plainly that the other Perſon intends to elude* his *Part of the Contract, as ſoon as I have perform'd* mine; *here I*

cannot be forced to comply firſt, *till I am ſecure of a Performance on the other ſide.*

XV. *Contracts thro' Fear.* L. N. N. l. 3. c. 7. § 11.

As for the other Sort of *Fear*, theſe Rules are to be obſerv'd. (1.) *If a Man has taken an Obligation upon him, thro' Fear of Miſchief threatned by a* third *Perſon, neither at the Inſtigation, nor with the Confederacy of the Party to whom the Engagement was made, he ſtands firmly bound to perform what he promis'd.* For there appears no Fault in him to whom the Promiſe was made, which can render him uncapable of acquiring a Right to the Performance of it; on the contrary, he may juſtly challenge a Requital, in that he lent his Aſſiſtance to the other, in warding off the Danger he apprehended from the *third* Perſon. (2.) *All ſuch* Covenants *that are made out of* Fear *or* Reverence *of our lawful Superiours, or by the* Awe *we have for thoſe to whom we are very much beholden, ſhall be firm and good.* (3.) *Thoſe* Bargains *which are* wrongfully *and* forcibly *extorted from a Man by the Perſon to whom the Promiſe or Agreement is made, are invalid,* For the *Violence* he unjuſtly uſes to ſet me under that *Fear*, renders him uncapable of pretending to any Right againſt me on account of ſuch Action of mine. And whereas in all other Caſes, every Man is bound to Reparation of what Wrong he ſhall do to another: this * Reſtitution to which he is bound is underſtood as it were to take off any

* There was no need to have recourſe to this Duty of Reſtitution, thereby to ſhew the Invalidity of ſuch Contracts. For the want of Liberty in the Perſon promiſing, and the want of Capacity in the Perſon obtaining by force the Promiſe, of creating to himſelf thereby any Right to the Thing promiſed, are ſufficient to ſhew the plain Nullity of the Agreement thus obtained.

Obligation

Obligation from ſuch Promiſe, ſince if what was promiſed were paid, it ought to be immediately reſtored.

XVI. *Conſent mutual.* L. N. N. l. 3. c. 6. § 15.

Moreover not only in Contracts, but in Promiſes the *Conſent* ought to be *reciprocal*; that is, both the Promiſer and he to whom the Promiſe is made muſt agree in the Thing. For if the latter ſhall not *conſent*, or refuſe to *accept* of what is offered, the thing promiſed remains ſtill in the Power of the Promiſer. For he that makes an *offer* of any thing, cannot be ſuppoſed to intend to *force* it upon one that is *unwilling* to receive it, nor yet to *quit* his own Title to it; therefore when the othe *denies* Acceptance, he who proffered it loſes nothing of his Claim thereto. If the Promiſe was occaſion'd by a *Requeſt* before made, the ſame ſhall be accounted to oblige ſo long, as till ſuch Requeſt be expreſsly *revok'd*; for in that caſe the thing will be underſtood to be *accepted beforehand*; provided yet that what is offer'd be proportion'd to what was deſired. For if it be not, then an *expreſs Acceptance* is requiſite; becauſe it may often do me no good to anſwer my Requeſt by halves.

XVII. *Impoſſible Engagements.* L. N. N. l. 3. c. 7.

As for the *Matter* of our Promiſes and Contracts, it is abſolutely neceſſary, that what we promiſe, or make a Bargain for, be *in our Power* to make good, and that ſo to do be not prohibited by any Law; otherwiſe we engage our ſelves either *fooliſhly* or *wickedly*. Hence it follows that *no Man is obliged to do Things impoſſible*. But if it be a Thing which at the time of the Bargain making was poſſible, and yet afterwards by ſome Accident, without any Fault of the Contracter, became altogether impoſſible, the Contract ſhall be null, if there be no-

thing as yet done in it; but if one Party have perform'd ſomewhat towards it, what he has advanced is to be reſtor'd to him, or an Equivalent given; and if this cannot be done, by all means it is to be endeavour'd that he ſuffer no loſs thereby. For in Contracts that is principally to be regarded which was *expreſsly* in the Bargain; if this cannot be obtain'd, it muſt ſuffice to give an *Equivalent*; but if neither can this be had, at leaſt the *utmoſt Care* is to be taken that the Party undergo no Damage. But where any Man ſhall *deſignedly*, or by ſome very *blameable Miſcarriage*, render himſelf uncapable of making good his Part of the Bargain, he is not only obliged to uſe his utmoſt Endeavour, but ought alſo to be *puniſh'd*, as it were, to make up the amends.

XVIII. *Unlawful Engagements.* L. N. N. l. 3. c. 7. § 6, 7.

IT is alſo manifeſt, that we cannot ſet our ſelves under any Obligation to perform what is *unlawful*. For no Man can engage himſelf farther than he hath *lawful Authority* ſo to do. But that Legiſlator who prohibits any Action by a Law takes away all legal Power of undertaking it, and diſables any Man from obliging himſelf to perform it. For it would imply a Contradiction, to ſuppoſe, that from a Duty enjoyn'd by the Laws ſhould ariſe an Obligation to do that which the ſame Laws forbid to be done. So that he tranſgreſſes who promiſes to do what is unlawful, but he is doubly a Tranſgreſſor who performs it. Hence alſo it follows, that neither are thoſe Promiſes to be kept, the Obſervation of which will be *miſchievous* to him to whom they are made; becauſe it is forbidden by the *Law-Natural* to do hurt to any Man, even though he do fooliſhly deſire it. And if a Contract

Contract be made to do ſome *filthy* and *baſe* Thing, neither ſhall be obliged to fulfil it. If ſuch filthy Thing be done by one Party purſuant to the Bargain, the other ſhall not be bound to give the Reward agreed for; * but if any thing be already given on that account, it cannot be demanded again.

XIX. *Engagements concerning other men,* L. N. N. l. 3. c. 7. § 10.

AND then, it is plain, that ſuch Engagements and Bargains as we ſhall make of what belongs to other Men are altogether inſignificant, ſo far as they are not ours, but ſubject to the Will and Direction of others. But if I promiſe thus; *I will uſe my Endeavour that ſuch a Man* (always ſuppoſing him to be one not abſolutely under my Command) *ſhall do ſo or no:* Then I am obliged by all methods morally poſſible, (that is, ſo far as the other can fairly requeſt of me, and as will conſiſt with Civility) to take pains to move that Perſon to perform what is deſired. Nay we cannot promiſe to a third Man *Things* in our own poſſeſſion, or *Actions* to be done by our ſelves, to which another has acquir'd a Right, unleſs it be ſo order'd, as not to be in force till the time of that other's Claim is *expir'd.* For he who by *antecedent* Pacts or Promiſes has already transferr'd his Right to another, has no more ſuch Right left to paſs over to a *third* Perſon: And all manner of *Engagements* and *Bargains* would be eaſily eluded, if a Man after having contracted with one, might be at liberty to enter a Treaty with another, wherein

* This determination ſeems not altogether juſt, becauſe he who had parted with his Goods, had parted with them by an act invalid and of no effect. See *L. N. N. l.* 3. *c.* 7. § 9.

Diſpo-

Diſpoſals ſhould be made contrary to the *firſt* Agreement, and with which it is impoſſible *this* ſhould conſiſt. Which gives foundation to that known Rule, *Firſt in Time, prior in Right.*

XX. *Conditions various* L. N. N. l. 3. c. 8. § 1.

BESIDE all which it is to be chiefly obſerv'd concerning Promiſes, that they are wont to be made *poſitively* and *abſolutely*; or *conditionally*, that is, when the Validity thereof lies upon ſome *Event* depending on Chance or the Will of Man.

Now *Conditions* are either *poſſible* or *impoſſible*; and the former are ſubdivided into *Caſual* or fortuitous, which *we* cannot cauſe to be or not to be; or *Arbitrary*, or ſuch as are in the Power of him to whom the Promiſe is made, that they are or are not comply'd with; or elſe *Mixt*, the fulfilling of which depends partly on the Will of the Perſon receiving the Promiſe, and partly on Chance.

Impoſſible Conditions are either ſuch as are *naturally* or *morally* ſo, that is, ſome Matters by the Nature of Things *cannot* be done; others by the Direction of the Laws *ought not* to be done. Such Conditions then as theſe being annex'd, do, according to the plain and ſimple Conſtruction of the Words, render the Promiſe *Negative*, and therefore null; tho' it is true it may be ſo provided by Law, that if to Affairs of great Concernment any ſuch *impoſſible Conditions* ſhould be annex'd the Agreement may remain good, rejecting theſe Conditions as if they had never been made; that ſo Men may not have buſied themſelves about that which otherwiſe can ſignifie nothing.

XXI. *Mediatory*

LASTLY, we promiſe and contract, not only in our *own Perſons*, but oftentimes by the *Mediation*

Mediation of other Men, whom we conſtitute the *Bearers* and *Interpreters* of our Intentions; by whoſe Negociations, if they deal faithfully by us in following the Inſtructions we gave, we are firmly obliged to thoſe Perſons who tranſacted with them as our Deputies. *Contracts.* L. N. N. l. 3. c. 9. § 1.

AND thus we have done with the *Abſolute* Duties of Man, by which, as it were, we naturally paſs to the *Conditional* Duties of Men. And theſe do all preſuppoſe ſome Human Inſtitution, founded upon an *Univerſal Agreement*, and ſo introduced into the World, or elſe ſome peculiar State or Condition. And of this Sort of Inſtitutions, there are three chiefly to be inſiſted on, to wit, *Speech* or *Diſcourſe*, *Property* and the *Value* of Things, and the *Government* of Mankind. Of each of theſe, and of the Duties ariſing therefrom we ſhall next diſcourſe. XXII. *Concluſion.*

CHAP.

CHAP. X.

The Duty of Men in Diſcourſe.

I *General Rule. To deceive no one by any means eſtabliſhed to expreſs our Thoughts.*

HOW uſeful and altogether neceſſary an Inſtrument of Human Society *Diſcourſe* is, there is no Man can be ignorant; ſince many have made that only an Argument to prove Man to be by Nature deſign'd for a *Social Life*. Now that a *lawful* and *beneficial Uſe* may be made hereof for the Good of the ſame Human Society, the *Law* of *Nature* has given Men this for a Duty, *That no Man deceive another either by Diſcourſe, or any other Signs which cuſtomarily are accepted to expreſs our inward Meaning.*

II. *Uniform Signification of Words.* L. N. N. l. 4. c. 1.

BUT that the Nature of *Diſcourſe* may be more throughly underſtood, it muſt firſt be known, that there is a two-fold Obligation reſpecting *Diſcourſe*, whether expreſt with the Voice, or written in *Characters*. The firſt is, that thoſe who make uſe of the *ſame Language*, are obliged to apply ſuch certain *Words* to ſuch certain *Things*, according as Cuſtom has made them to ſignify in each Language. For ſince neither any *Words* nor any particular *Strokes* form'd into *Letters* can *naturally* denote any certain *Thing* (otherwiſe all Languages and Characters for writing would be the ſame; and hence the Uſe of the Tongue would be to no purpoſe if every Man might call every *Thing* by what *Name* he pleas'd;) it is abſolutely neceſſary among thoſe who ſpeak the ſame Language, that there be a *tacit Agreement* among them, that this certain Thing ſhall be ſo, or ſo call'd, and not otherwiſe. So that unleſs

an

an *uniform Application* of *Words* be agreed upon, 'twill be impoſſible for one Man to gather the Meaning of another from his Talk. By virtue then of this *tacit Compact*, every Man is bound in his common Diſcourſe to apply his Words to *that Senſe*, which agrees with the *receiv'd Signification* thereof in that Language: From whence alſo it follows, that albeit a Man's *Sentiments* may differ from what he expreſſes in Words, yet in the Affairs of Human Life he muſt be look'd upon as *intending* what he *ſays*, tho', as was ſaid, perhaps his inward Meaning be the clear contrary. For ſince we cannot be inform'd of another's *Mind* otherwiſe than by outward *Signs*, all Uſe of Diſcourſe would be to no purpoſe, if by *mental Reſervations*, which any Man may form as he liſts, it might be in his power to elude what he had declar'd by Signs uſually accepted to that end.

III. *Diſcourſe to be plain.* L. N. N. l. 4. c. 1. § 6.

THE other Obligation which concerns *Diſcourſe*, conſiſts in this, that every Man ought by his *Words* ſo to expreſs to another his *Meaning*, that he may be plainly underſtood. Not but that it is in a Man's power to be *ſilent*, as well as to *ſpeak*; and whereas no Man is bound to tell every one all that he bears in his Mind; it is neceſſary that there be ſome *peculiar Obligation* that ſhall engage him firſt to ſpeak, and then ſo to ſpeak as that another ſhall fully underſtand his Meaning. Such Obligation may ariſe from a *particular Compact*, or ſome *common Precept of the Law Natural*, or from the *Nature of the preſent Affair*, in which Speech is made uſe of: For oftentimes a *Bargain* is made expreſsly with a Man, that he ſhall diſcloſe to me all that he knows in ſome Matter;

Matter; as ſuppoſe I deſired to be inſtructed in any Science: Frequently alſo I may be *commanded* by ſome Precept of the *Law of Nature* to communicate my Skill to another, that by this Means I may be helpful to him, or that I may ſave him from Miſchief, or that I may not give him ſome Cauſe or Occaſion of receiving a Harm: And laſtly, the *preſent Caſe* may require me to declare my Opinion in a Matter wherein another is concerned; as it often happens in Contracts of the greateſt Importance.

IV. *Silence.* L. N. N. *l.* 4. *c.* 1. § 7.

BUT becauſe it cannot *always* happen, that upon any of theſe Heads I am *obliged* to ſignify my Thoughts upon any Matter, it is plain that I am not bound to diſcloſe in Words any more than another has a *Right* either *perfect* or *imperfect* to require. So that I may, by holding my Tongue, lawfully conceal what he has no juſt Claim to the Knowledge of, or to the Diſcovery whereof I lie under no Obligation, however earneſtly it be deſir'd.

V. *Counterfeit Diſcourſe.*

NAY, ſince *Speech* was not only ordain'd for the Uſe of *others*, but *our own* Benefit alſo; therefore whenſoever my private Intereſt is concern'd, and it occaſions Damage to no Body elſe, I may ſo order my Words, that they may communicate a Senſe different from that which I bear in my Mind.

VI. *Figurative Speech.*

LASTLY, becauſe oftentimes thoſe to whom we talk upon ſome Matters may be ſo diſpoſed, that from a *downright* and *plain Diſcourſe* they would perceive the true State of the Caſe, which ought rather to be *conceal'd*, becauſe a full Knowledge would not procure the good End we drive at, but be a *Detriment* to 'em; we

we may in ſuch Caſes uſe a *figurative* or *ſhadow'd* way of *Speech*, which ſhall not directly repreſent our Meaning and plain Senſe to the Hearers. For he who would and ought to benefit another, cannot be bound to attempt it after ſuch a manner, as ſhall incapacitate him from obtaining his End.

VII. *Verity.* L. N. N. l. 4. c. 1. § 8.

FROM what has been ſaid may be gather'd wherein that *Verity* conſiſts, for their Regard to which good Men are ſo much celebrated; to wit, that our *Words* do fitly repreſent our *Meaning* to any other Perſon who *ought* to underſtand 'em, and which it is our *Duty* to *expreſs plainly* to him, either by a perfect or imperfect Obligation; and this to the end either that he upon knowing our Minds may make to himſelf ſome Benefit thereby, or that he may avoid ſome undeſerv'd Evil, which he would incur upon a wrong Underſtanding of the Caſe. Hence by the Bye it is manifeſt, that it is not always to be accounted *Lying*, when even for the nonce a Tale is told concerning any Thing in ſuch a manner as does not exactly quadrate with the Thing it ſelf, nor with our own Opinion of it; and conſequently, that the Congruity of *Words* with *Things*, which conſtitutes the *Logical* Verity, is not in all Points the ſame with *Moral Truth*.

VIII. *A Lye.*

ON the contrary that is rightly call'd a *Lye*, when our Words bear a different Signification from that which we think in our Minds, whereas the Perſon to whom we direct our Diſcourſe has a *Right* to underſtand the Thing as it *really* is, and we are under an *Obligation* of making our Meaning *plain* to him.

FROM

IX. *Innocent Untruths.* L. N. N. l. 4. c. 1. § 11.

FROM what is ſaid it appears, * that thoſe are by no Means chargeable with *Lying*, who entertain *Children* or the like with Fables and fictitious Diſcourſes for their better Information, they being ſuppos'd uncapable of the naked Truth. As neither are thoſe who make Uſe of a *feign'd Story* to ſome *good End*, which could not be attain'd by ſpeaking the *plain Truth*; ſuppoſe, to protect an Innocent, to appeaſe an angry Man, to comfort one who is in Sorrow, to encourage the Fearful, to perſuade a nauſeating Patient to take his Phyſick, to ſoften the Obſtinate, or to divert the evil Intention of another, and the like; or, if the Secrets and Reſolutions of a Community are to be kept from publick Knowledge, we may raiſe falſe Rumours in order to conceal 'em, and to miſlead the importunate Curioſity of others; or, if we have an Enemy, whom by open Force we cannot Annoy, we may, by way of Stratagem, make Uſe of any lying Tales to do him Miſchief.

X. *Equivocation and mental Reſervation.* L. N. N. l. 4. c. 1. § 14.

ON the other ſide, if any Man be *bound* in Duty to ſignifie *plainly* his *true Meaning* to another, he is not without Blame, if he diſcover only a *part* of the Truth, or amuſe him with *ambiguous* Diſcourſe, or uſe ſome *mental Reſervation* not allow'd in the common Converſation of Men.

* See *Grotius de Jure Belli, &c. lib.* 3. *cap.* 1. § 9. *ſeqq.*

CHAP.

CHAP. XI.

The Duty of thoſe which take an Oath.

ALL Men agree in the Opinion, That an *Oath* gives a great additional Confirmation to all our Aſſertions, and to thoſe Actions which depend upon our Diſcourſe. An *Oath* is, * *A Religious Aſſeveration, by which we diſavow the Divine Clemency, or imprecate to our ſelves the Wrath of God if we ſpeak not the Truth.* Now when an All-wiſe and an Almighty *Witneſs* and *Guaranty* is invok'd, it cauſes a ſtrong Preſumption of the Truth, becauſe no Man can eaſily be thought ſo Wicked, as to dare raſhly to call down upon himſelf the grievous Indignation of the Deity. Hence it is the Duty of thoſe that take an Oath, *To take the ſame with awful Reverence, and religiouſly to obſerve what they have ſworn.*

I. *An Oath.* L. N. N. l. 4. c. 2.

Now the *End* and *Uſe* of an Oath is chiefly this, To oblige Men the more firmly to ſpeak the Truth, or to make good their Promiſes and Contracts out of an Awe of the Divine Being, who is infinitely Wiſe and Powerful; whoſe Vengeance they imprecate to themſelves when they Swear, if they wittingly are guilty of Deceit; whereas otherwiſe the Fear of what *Men* can do may not be ſufficient; becauſe poſ-

II. *The End and Uſe.*

* Compare herewith the whole 13*th Chapter* of the 2*d* Book of *Grotius de Jure*, &c.

ſibly they may have Hope to oppoſe or eſcape their Power, or to beguile their Underſtandings.

III. *Swearing by what.* L. N. N. l. 4. c. 2. § 3.

SINCE GOD alone is of infinite Knowledge and of infinite Power, it is a manifeſt Abſurdity to ſwear by any other Name but the Name of GOD only; that is, in ſuch a Senſe, as to invoke it for a Witneſs to our Speech, and for an Avenger of our Perjury: But if in the Form of Oaths any other Things, that we hold Dear, or have in Veneration or Eſteem, be mention'd, it is not to be underſtood that ſuch Things are invok'd as Witneſſes to our Truth or Avengers of our Falſehood; but GOD only is herein invok'd, with a Deſire, that if we ſwear falſely, he would be pleas'd to puniſh our Crime, in theſe Things eſpecially for which we are moſt nearly and tenderly concern'd.

IV. *Forms how to be accommodated.* L. N. N. l. 4. c. 2. § 4.

IN Oaths the *Form* which is preſcrib'd, (by which the Perſon ſwearing invokes GOD as a Witneſs and an Avenger,) is to be *accommodated to the Religion of the ſaid Swearer*; that is, to that Perſuaſion and Opinion of GOD which he is of. For 'tis to no Purpoſe to make a Man ſwear by a God, whom he does not *believe*, and conſequently does not *fear*. But no Man ſuppoſes himſelf to take an Oath in any other Form, nor under any other Notion, than that which is conſonant to the Precepts of *his Religion*, which, in his Opinion, is the *true*. Hence alſo it is, that he who ſwears by *falſe Gods*, which yet himſelf takes to be true ones, ſtands obliged, and if he falſifies is really guilty of Perjury; becauſe whatever his peculiar Notions were, he certainly had ſome Senſe of the Deity before his Eyes; and therefore by wilfully forſwearing himſelf he violated, as far as he was

was able, that Awe and Reverence which he ow'd to Almighty GOD.

THAT an Oath may be *binding*, 'tis neceſſary it be taken with *deliberate Thoughts*, and a *real Deſign*: Whence he ſhall not be obliged by an Oath who meerly *recites* it; or ſpeaking in the *firſt Perſon*, dictates the concept formal Words thereof to another who is to ſay after him. But he who ſhall *ſeriouſly* behave himſelf as one that is about to *ſwear ſolemnly*, ſhall be obliged, whatſoever *mental Reſervations* he all the while may harbour in his Mind. For otherwiſe all Oaths, nay, all Methods of mutual Obligation by the Intervention of the plaineſt Significations would be of no Uſe to human Life, if any Man by his *tacit Intention* could hinder ſuch an Act from obtaining ſuch an Effect as it was firſt inſtituted to produce. V. *Deliberation neceſſary.* L. N. N. l. 4. c. 2. § 5.

WE ought likewiſe carefully to obſerve, that Oaths do not of themſelves produce a new and peculiar Obligation, but are only apply'd as an *Acceſſional Strength*, and an additional Bond to an *Obligation*, in its nature valid before. For whenever we ſwear, we always ſuppoſe ſome Matter, upon non-performance of which we thus imprecate the Vengeance of Heaven. But now this would be to no purpoſe, unleſs the Omiſſion of the Thing ſuppos'd had been before unlawful, and conſequently, unleſs we had before been oblig'd. Tho' indeed it frequently happens, that we comprehend in one Speech, both the *principal Obligation* and the *additional Bond* of the *Oath*; as thus, *As God help me, I'll give you a hundred Pounds.* Where the Oath is not ſuperfluous, albeit 'tis added to a Promiſe that might have been valid of it ſelf. VI. *Oaths how obliging.* L. N. N. l. 4. c. 2. § 6.

Becauſe tho' every good Man believes a bare Promiſe to oblige, yet 'tis look'd upon to be the more firm when 'tis reinforced with an Imprecation of Vengeance from above upon a Failure. Hence it follows, that any Acts which were before attended with ſome inward *Flaw*, hindring any Obligation to ariſe from them, cannot be made obligatory by the Acceſſion of an Oath; as neither can a *ſubſequent* Oath avoid a *former legitimate Engagement*, or annul that Right which *another* may claim thereby; thus a Man would ſwear in vain not to pay another Perſon what is juſtly due to him: Nor will an Oath be of any Validity, where it appears, that 'twas made by the Juror upon *Suppoſition* of a Thing to be done which was not *really ſo*; and that he would not have ſo ſworn, had not he *believ'd* it to be done; eſpecially if he were *cajol'd* into ſuch his Error by the *Craft* of him to whom the Oath was made: * Neither ſhall he, who by ſetting me under *panick Fear* forces me to take an Oath, have any good Title to require my Performance. Farthermore, an Oath ſhall have no Obligation upon me to do any *unlawful Act*, or to *omit* the performing any *Duty* enjoyn'd by the Laws of God or Man. Laſtly, an Oath cannot *alter* the Nature or Subſtance of the Contract or Promiſe to which it is annex'd: Hence it cannot oblige to *Impoſſibilities*. Again, a *Conditional* Promiſe, by the Addition of an Oath, is not changed into a *Poſitive* and *Abſolute* Promiſe: In like manner, it is no leſs requiſite to Promiſes confirm'd by Oaths, than to others

* *Grotius de Jure Belli & Pacis, Lib.* 3. *cap.* 19. § 5.

which

which are not ſo confirm'd, that they be accepted by the other Party: So that he who obtains a Right by any Covenant, may equally releaſe the Performance of it, whether it was ſworn to or not.

VII. *Puniſhment.* L. N. N. l. 4. c. 2. § 12.

But the taking of an *Oath* has this Effect among Men, for the ſake of that Invocation of God which is therein made uſe of, whoſe Wiſdom no Man's Cunning can elude, and who ſuffers not the Man that mocks Him to eſcape unpuniſh'd; that not only a *heavier Puniſhment* is aſſign'd to him who forſwears himſelf, than to him who barely breaks his Word; but it puts them in mind to avoid all *Deceit* and *Prevarication* in the Matters which it is added to confirm.

VIII. *Strict Interpretation.* L. N. N. l. 4. c. 2. § 14.

Not yet that *all Oaths* are to be conſider'd in their greateſt *Latitude*, but that ſometimes they muſt be interpreted in the *narroweſt Senſe*, if ſo it be, that the Subject-matter ſeem to require it: For inſtance; if the Oath be made to promote ſome *malicious Deſign* againſt another, to execute ſomething *threatned*, and not to perform ſomewhat *promis'd*. Neither does an Oath exclude *tacit Conditions* and *Limitations*, provided they are ſuch as plainly reſult from the Nature of the Thing; as ſuppoſe, I have ſworn to give another whatſoever he ſhall requeſt, if he ask what it is *wicked* or *abſurd* for me to grant, I am not at all obliged. For he who indefinitely promiſes any Thing to him that deſires, before he knows what he is like to ask, preſuppoſes the other will crave nothing but what is *honeſt*, and morally *poſſible*, not Things abſurd or miſchievous to himſelf or any Body elſe.

IX. *Sense of an Oath.* L. N. N. l. 4. c. 2. § 15.

THIS is also to be noted, that in Oaths *the Sense of all the Words thereof is to be such as he shall acknowledge himself to take them in, who accepts the Oath*, that is, *to whom* the other Party swears. For the Oath is to be look'd upon to be made for *his* sake, and not for the sake of the *Juror*. Whence it is *his* Part to dictate the *Form* of the Oath, and this to do in Words as *plain* as is possible, so that himself may signify in what *Sense* he conceives them; and the Person swearing may profess that he well understands his *Meaning*, and then those Words are *distinctly* to be express'd, that so no room may be left for Cavils or Shuffling.

X. *Oaths divided.*

OATHS may most fitly be *distinguish'd* according to the *Use* they are apply'd to in Human Life. * Some are annex'd to *Promises* and *Contracts*, thereby to procure a *strict and religious Observance* of the same; others are apply'd to the *Confirmation* of any Man's *Assertion* concerning a Matter of Fact not altogether evident, and where the Truth cannot by other Means be more conveniently search'd out; such are the Oaths administred to *Witnesses*, and those who are privy to another Man's doings; sometimes also two *Adversaries*, or *Litigants*, may, with the Consent of the Judge, or the Concession of one Party, by taking such or such an Oath put an end to their *Law-Suit*.

* These are call'd Obligatory or Promissory Oaths, (*Juramenta Promissoria*:) the other Assertory or Affirmative Oaths, (*Assertoria.*)

CHAP.

CHAP. XII.

Duties to be obſerv'd in acquiring Poſſeſſion of Things.

I. *Other Creatures uſeful to Man.*

WHEREAS ſuch is the Condition of Man's Body, that it cannot be *ſupported* and *preſerved* from that which would deſtroy its Fabric, without the Aſſiſtance of *Things without* him; and whereas by making Uſe of *other Creatures* his Life may be render'd much more *comfortable* and *eaſie*; we may ſafely gather, that it is the Will of the ſupreme Moderator of the World, that he be allow'd to apply ſuch other Creatures to his Service, and that he may even deſtroy many of them for his Occaſions. * Neither doth this hold, as to *Vegetables* only, which have no Senſe of the Loſs of their Beings; but it reaches even the *innocent Animals*, which though they die with Pain, yet are kill'd and devour'd by Men for their Suſtenance without Sin. L. N. N. l. 4. c. 3. § 2.

II. *Poſſeſſion introduced.*

FARTHER, all theſe *outward Things* are underſtood to have been left in the Beginning by God *indifferent to the claim of all Men*; that is, ſo that none of them were the Property of this Man rather than that. Not but that Men were at liberty to *diſpoſe* Things ſo, as ſhould ſeem requiſite to the Condition of Mankind,

* See *Grotius de Jure Belli & Pacis, lib.* 2. *cap.* 2. § 2. *ſeqq.*

and the Conſervation of Peace, Tranquillity and good Order in the World. Hence it was, that at firſt, while the Human Race was but of a ſmall Number, * it was agreed, That *whatever any one did firſt ſeize ſhould be his, and not be taken from him by another*; provided however, *that he only poſſeſſes himſelf out of the common Store of what is ſufficient for his private Service, but not ſo as to deſtroy the whole Fund, and ſo prevent a Stock for future Uſes.* But afterward, when Mankind was multiply'd, and they began to beſtow *Culture* and *Labour* upon thoſe Things which afforded them Food and Raiment; for the prevention of Quarrels; and for the ſake of good Order, thoſe *Bodies* or *Things* alſo, which produced ſuch Neceſſaries, *were divided among particular Men*, and every one had his proper Share aſſign'd him, with this general Agreement, That *whatſoever in this firſt Diviſion of Things, was yet left unpoſſeſt, ſhould for the future be the Property of the firſt Occupant.* † And thus, God ſo willing, with the previous Conſent, or at leaſt by a tacit Compact of Man, *Property, or the Right to Things.* was introduced into the World.

L. N. N. l. 4. c. 4. § 5.

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* There was no need of any Convention, either expreſt or tacit for this purpoſe. The Right of the firſt Occupant is neceſſarily concluded to be conformable to his Intention who beſtows any Thing in common to many, provided, that in poſſeſſing one's ſelf of that which no one has a particular Right to, we content our ſelves with a modeſt Proportion, not engroſſing the Whole, but leaving what is ſufficient for the Occaſions and Uſe of others See *L. N. N. l.* 4. *c.* 4 § 4.

† See *Grotius de Jure Belli & Pacis, lib.* 2. *cap.* 3. § 1.

Now

III. *Property what.* L. N. N. l. 4. c. 4. § 2.

Now from *Property* flows a Right, whereby the Subſtance, as it were, of any Thing ſo belongs to One, that it cannot after the *ſame* manner *wholly* belong to Another. From whence it follows, that we may at our own Pleaſure diſpoſe of thoſe Things which are our Property, and hinder all other People from the Uſe of them; unleſs by Agreement they have procur'd from us ſome ſpecial Right. Although in Communities it does not always happen that Properties are kept ſo unmix'd and abſolute, but are ſometimes circumſcrib'd and limited by the Municipal Laws thereof, or by Orders and Agreements of Men among themſelves. But when any certain Thing belongs jointly to more Perſons than one after the ſame manner, then it is ſaid to be *common* to thoſe ſeveral Perſons.

IV. *All things not poſſeſſed.* L. N. N. l. 4. c. 5. § 2.

But as Things did not *all at once* become the Poſſeſſions of Men, but ſucceſſively, and according as the State of Mankind ſeem'd to require; ſo it was not neceſſary neither that *every Thing* in the World ſhould be claim'd by one Man or other, but, the Peace of Mankind being preſerv'd, *ſome Things may, and ſome Things ought to continue, as at the Beginning, common to all.* For there are Things which are, indeed, very advantagious to Man, but then ſince they are *inexhauſtible*, ſo that every Man may have the Benefit of 'em, and yet no ſingle Perſon can have the leſs Uſe of them, it would be fooliſh, and to no purpoſe, for any one to encloſe or lay claim to 'em. Such are the Light of the Sun, the Air, the running Water, and the like: Among which alſo may be accounted the vaſt Ocean flowing between great

great Continents, for ſo much of it as is very far diſtant from the Shore. Becauſe 'tis not only more than ſufficient for the promiſcuous Uſe of all Men, but 'tis morally impoſſible for any ſingle Nation to guard it. * For where a Thing is of that Nature, that other Men cannot by any Means be hinder'd from the Uſe of it, it is not only in vain to divide or lay claim to it, but it is apt to give Occaſion for inſignificant Quarrels.

V. *Property twofold.* L. N. N. l. 4. c. 6.

THE Methods of acquiring Property are either *Original* or *Derivative:* The *Original Ways* of obtaining Property, are thoſe by which the Property of Things was firſt introduced: The *Derivative Ways* are thoſe, by which a Property already ſettled paſſeth from one Man to another. Again, the *Original Way* of acquiring Property is twofold; either, firſt, *ſimple and abſolute*; as when we obtain *Dominion* and *Property* over the Body or Subſtance of the Thing: Or, ſecondly, *primitive and reſpective*; as when we add to a Thing already our own ſome farther Improvement and Increaſe.

VI. *Premier Seiſin.*

AFTER it had been covenanted among Mankind that Things ſhould be *appropriated* to this or that Man, it was alſo agreed, That what Things ſoever had *not fallen* within that *firſt Diviſion*, ſhould thereafter become the Property of the *firſt Occupant*, that is, of him, † who before any other, ſhould actually ſeize it

* See *Grotius de Jure Belli & Pacis, l.* 2. *c.* 2. § 3.

† That whereon the firſt Occupant properly grounds his Right is, his giving open Notice, before any other, of his Deſign and Intention to preſerve to his own Uſe this or

it with a Design of possessing the same. So that even at this time the Original Method of acquiring Property in many Things is only *Premier Seisin*, or the first Occupancy. After this manner Titles are made to desolate Regions, which no Man ever claim'd, which become his who *first enters* upon 'em with an Intention of making them his own, provided he cultivate them and assign *Limits* how far he propounds to occupy. But when any Number of Men *jointly* possess themselves of any Tract of Land, 'tis customary to assign to each Member of the Company a *Share*, and to account what is left undivided to belong to the Society in *common*. * By this *first* Occupancy also are gain'd all the wild Beasts, Birds, and Fishes living in the Sea, Rivers, or Lakes thereunto appertaining; as well as what by the Sea shall be thrown upon the Shore; except *particular Laws* inhibit the promiscuous Seizure of the same, or assign them to some certain Claimant. These, if we would make our own, we must actually *seize* 'em, and take 'em into our *Possession*. By this Occupancy also we may rightfully acquire Possession of Things whereof the

L. N. N. l. 4. c. 6. § 3, 4

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or that Thing, which he has made himself the first Possessor of. If therefore he has given any such fair and significant Notice of such his Intention; or if any others, who might with him have a common Right to the Thing, shall freely and significantly set forth their Intention to depart from their Share, or Part of the Thing in favour of this Claimant: He then comes to have the Original Property in the Thing, even before he may have taken actual Possession of it. See *L. N. N. l.* 4. *c.* 6.

* See *Grotius de Jure Belli, &c. L.* II. *c.* 8. § 2. *seqq.*

Property

Property which any other Perſon could have is *extinct*. As for inſtance, in Things which are caſt away with Intention of the Owner not to have 'em any more, or in Things which at firſt we loſt unwillingly, but in Time relinquiſh'd and forewent. * To which may be added what the Lawyers call *Treaſure trove*, or Money found, the Owner whereof is not known, which goes to the Finder, except by the ſpecial Laws of a Country it be otherwiſe provided.

VII. *Acceſſional Improvements.* L. N. N. l. 4. c. 7.

MOREOVER, there are many Things capable of being poſſeſs'd which continue not always in the ſame State, but ſoon after ſeveral manners *increaſe* of themſelves or inlarge their Subſtance; to others ſome *external Additions* are made; many bring forth *Fruit*, and not a few by Man's Labour and Workmanſhip admit of *Improvement*. All theſe are compriſed under the Head of *Acceſſional* Advantages, and may be divided into two Sorts; for *ſome* without the Help of a Man accrue from *Nature* alone; while *others* either wholly or in part are to be attributed to *Human Induſtry*. † Concerning both which this is to be the Rule, To him who is the Owner of the *Thing*, to the ſame belong the *Improvements* and *Acceſſional* Advantages; and he who has form'd any Matter of his own into ſuch or ſuch a *Faſhion*, is Owner of that *Form* or *Faſhion*.

VIII. *Services.*

BUT Caſes often happen, where, either by Contract, or ſome different Way, another Man

* See *Grotius de Jure Belli & Pacis, lib.* 2. *c.* 8. § 2. *ſeq.*
† See *Grotius de Jure Belli & Pacis, Lib.* 2, *cap.* 8.

may

may get a Right to receive a certain *Profit* out of Things that are *ours*, or to prohibit us the Uſing even of what is *our own* to *every* Purpoſe. Theſe Rights are wont to be call'd *Services*, and they are of two Sorts, either *Perſonal*, where the Advantage from what belongs to another Man comes to the Perſon *immediately*; or *Real*, where ſuch Benefit is receiv'd from that which is another's by the Means or *Mediation* of that which is ours; among which are accounted the Right of receiving Profits, of making uſe of what is another's, of living in ſuch a Place, of commanding the Work of Servants. The *Real Services* are again ſubdivided into ſuch as regard the *City* or the *Country*; the firſt Sort are the ſupporting my Neighbour's Houſe or Wall which cannot but bear upon mine, affording the Benefits of Lights, not ſtopping them up, allowing Proſpects, carrying off the Rain-Water, and the like: The *latter* are Liberty of Paſſage for Men or Cattle, Leave to derive or draw Water, or to water Cattle, or to graze 'em for a time, *&c.* All which Services have been introduced for the Preſervation of good *Neighbourhood*. L. N. N. l. 4. c. 8.

IX. *Derivative Property.* L. N. N. l. 4. c. 9.

AMONG the *derivative* Methods of acquiring Property, ſome are when by the Diſpoſal of the Law Things are devolv'd from one upon another; others are when Poſſeſſion is transferr'd by the *former Owner*; and this ſometimes affecting the ſame in *whole*, and ſometimes in *part*.

X. *Inheritance to thoſe who die inteſtate.*

THE * Whole of an Eſtate by the Death of the former Owner generally paſſes by *Succeſſion* to

* See *Grotius de Jure Belli, &c. l.* 2. *c.* 7. § 3. *ſeqq.*

L. N. N. l. 4. c. 11.

to the *next Heir* of the Inteſtate. For it being repugnant to the common Inclinations of Men, and altogether diſſerviceable to the Peace of Mankind, that ſuch Poſſeſſions ſhould be accounted as *foregone* and *relinquiſh'd*, and as left to be a Prey to any who ſhall ſeize 'em, which ſuch Owner had, while he liv'd, taken ſo much Care and Pains to get: Hence, by the Dictates of *Reaſon* it has obtain'd among all civiliz'd Nations, that if any Man dies, not having *diſpos'd* of what he had, the ſame ſhall *devolve* to thoſe, whom, according to the *general Inclination* of Mankind, he muſt be thought to have holden moſt dear to him. And theſe, regularly conſider'd, are thoſe who *deſcend* from us, as our *Children*, &c. after them thoſe who are of the ſame *Conſanguinity*, according as they are nearly ally'd. And tho' there may be many, who either for having receiv'd *Benefits*, or from ſome *particular Affection*, have a greater Reſpect for Perſons not at all by *Blood* related to them, than for the neareſt *Kin*; yet for Peace ſake it is neceſſary, without taking Notice of the peculiar Caſe of ſome Few, rather to follow the *univerſal Propenſity* of Man, and to obſerve that *Method* of Succeſſion which is moſt plain, and leaſt obnoxious to *Controverſies*; which would be very apt to ariſe, if the *Benefactors* and *Friends* of the deceaſed might be admitted to conteſt Succeſſion with the next of *Kin*. So that if a Man has a mind to prefer thoſe to whom he ſtands obliged by Kindneſſes, or ſuch as he has on any other account a Love for, he is to make ſuch Diſpoſals openly and expreſsly.

WHENCE

XI. *Children Heirs.* l. 4. c. 11. § 3.

WHENCE it follows, that the next *Heirs* to any Man are his *Children*, which are given by Nature to Parents to be carefully bred and educated, and for whom every Parent is supposed to wish a most plentiful Provision, and to design to leave whatsoever he shall die possess'd of. But by *Children* are *chiefly* understood such as are born in lawful Matrimony: For to these much Favour is due from *Reason* itself, from the *Honour* and *Decency* of the married Life, and from the *Laws* of all civiliz'd Countries, above the *Illegitimate*. All which Considerations obtain yet with these Exceptions, to wit, unless the Father has sufficient Reason not to *acknowledge* such a one for his Son, or *disinherits* him for some heinous Wickedness. In the same Case with *Children* are also to be consider'd Progeny of *lower Degrees*, as Grand-children, whom the Grand-father is bound to bring up, and who have Right to share his Inheritance together with the Uncles on both sides; and this, because there can be no Reason, that the Misery of losing their deceased Parent should be aggravated by being excluded from their Proportion of Inheritance in the Estate of their Grand-father. Upon failure of *Heirs descendant*, 'tis reasonable the Goods of Children revolve to their *Parents*; and that to those w! are Fatherless, Motherless, and Childless their *Brethren* should succeed; and upon Default of these, the *next of Kin* to the deceas'd ought to inherit. Tho' in order to prevent Contentions, to which on this score great Occasions are frequently given, and that this Matter may be settled for the publick Good, in most Communities the *Order of Succession*

ceſſion is found to be accurately ſtated; and ſuch Directions of the Government it is moſt ſafe for every private Man to follow in this caſe, unleſs very weighty Cauſes force him to the contrary.

XII. *Of Preſcription.* L. N. N. l. 4. c. 12.

ANOTHER *derivative* Method of acquiring Property juſtifiable by Law, was by the * *Romans* call'd *Uſucaptio*, by the Modern's *Preſcription*; by which he who by honeſt Means and a juſt Title hath gotten Poſſeſſion of what was really another's, and hath alſo held it for a conſiderable time, without being diſturb'd or oppos'd, obtains the full Property of the Thing thus poſſeſs'd, ſo as to extinguiſh all the *Right* and *legal Claim* of the former Owner.

THE Reaſons on which this *Right of Preſcription* is grounded, are, Firſt, The former Proprietor having for ſo long time neglected claiming what was his, is judged voluntarily to have relinquiſh'd all Right and Title to it; it being reaſonable to believe, that in a ſufficient Space of time he could not want Opportunities, had he had Inclinations to put in his Claim. Secondly, The Preſervation of the Peace of Society demands, that he who by *honeſt* Methods comes to the *Poſſeſſion* of what he has, ſhould not be perpetually liable to have taken from him, what became his Purchaſe by a *fair and honeſt Title*; eſpecially it being much more grievous to the *preſent Poſſeſſor* to be turn'd out of a Poſſeſſion honeſtly acquir'd, than to the *former Owner* not to be put into Poſſeſſion of what he had long ſince loſt the *Hopes* and *Ex-*

* See the whole *4th Chap.* of the *2d* Book of *Grotius de Jure Belli, &c.*

pectations

pectations of. The Rules of *Natural Equity* are ſufficient to determine what time ſhall ſuffice to create *Preſcription* in particular Caſes: However, it is much better, for the Prevention of *Strife* and *Controverſies*, that certain limited times, according to Reaſon and Convenience, ſhould be ſtated and mark'd out by all Communities, whereby it may be determined what ſhall make a good *Preſcription*.

XIII. *Laſt Will.* L. N. N. l. 4. c. 10.

THE Whole alſo of an Eſtate may, by an Act of the former Proprietor, upon his Death be paſs'd away by his * *Laſt Will* and *Teſtament*; for this has been allow'd by moſt Nations, that for ſome kind of Eaſe to our Thoughts of Mortality, a Man yet alive may, if Death happen, transfer what he has of outward Goods to ſome Perſon that he loves beſt. Now whereas in the moſt ancient Times it ſeems to have been cuſtomary, that the dying Man upon the Approach of his End *openly declar'd* his Heirs, and with his own Hands *deliver'd* ſuch or ſuch Portions into the Hands of them who were to receive; yet afterwards, for good Reaſons, another manner of *Bequeathing* was approved by many People; to wit, that a Man may at any time, when himſelf thinks good, make his own Will, and either declare it *openly*, or keep it *cloſe* in Writing; which Will alſo he may at his Pleaſure *alter*, and of which the Heirs he has named or written down cannot make any Uſe till the Teſtator be *dead*. Not but that ſuch *Laſt Wills*, of how much Authority ſoever they are among Men, yet are to be order'd with Conſideration

* See *Grotius de Jure Belli, &c. lib.* 2. *cap.* 6. § 14.

of the Party's *various Relations* to Men, and of the Good of the *Community*; the Neglect whereof has given Occaſion for the *Laws* oftentimes to provide and give Rules for making them; from which preſcribed *Directions*, if any Man depart, he has no Reaſon to *complain*, that Regard was not had to his *Laſt Will*.

XIV. *Gift.* WHILE Men are yet living, Things are transferr'd by the Act of the firſt Proprietor, either *Gratis* or *Freely*; or elſe by the Mediation of ſome *Contract*. The former Way of Transferring is call'd *Giſt*: And of the latter, which is *Contracting*, we ſhall ſpeak hereafter.

XV. *Forcible Poſſeſſion.* SOMETIMES alſo Things change their Owner without the Conſent, and even *againſt the Will* of the ſame Owner; and this is moſtly in Communities, by way of *Fine*, when ſometimes *all* the Eſtate of a Convict, ſometimes ſuch a *Portion* only ſhall be forfeited, and the ſame ſhall be given either to a private Perſon who has ſuffer'd Wrong, or applied to the Uſes of the Publick. So in *War* Goods are *forcibly* taken from the Poſſeſſor, who parts with them very *unwillingly*, by an Enemy who is too ſtrong for him, and become the true *Property* of the Seizer; not but that the firſt Owner has ſtill a Right with a greater Force, whenever he can, to recover them, ſo long as till by ſubſequent Treaties of Peace he does in effect renounce his Pretences thereto.

L. N. N. l. 4. c. 6. § 14.
l. 2. c. 16. § 13.

CHAP.

CHAP. XIII.

The Duties which naturally reſult from Man's Property in Things.

PROPERTY in Things being eſtabliſhed among Men, theſe Duties naturally ariſe.

I. *We muſt conſciencioufly abſtain from invading our Neighbours Property.* L. N. N. l. 4. c. 13.

* EVERY *Man is obliged to ſuffer another, who is not a declared Enemy, quietly to enjoy whatſoever Things are his; and neither by Fraud or Violence to ſpoil, imbezzel, or convert them to his own Uſe.* Whence it appears, That Theft, Rapine, removing of Boundaries, and the like Crimes, which tend to the Invading and Incroaching upon other Mens Properties, are forbidden.

II. *Reſtitution to be made if we poſſeſs what belongs to another.* L. N. N. l. 4. c. 13. § 2.

WHEN *any Thing, that belongs to another, falls into our Hands, although it be fairly on our Part, that is, without Trick or Fraud of ours; yet if it belongs to another Perſon, and we have Poſſeſſion of it, we are obliged to take care, as far as in us lies, to return it to its right Owner.* By this is not to be underſtood, That when we have procur'd any Thing to our ſelves by fair and honeſt Means, and enjoy it by a rightful Title, we are to make groundleſs Doubts and Scruples about the Validity of our Right, and make Proclamation, as it were, That we are in Poſſeſſion of ſuch a Thing; that, if poſſibly it ſhould belong to another Perſon, the Proprie-

* *See* Grotius de Jure Belli & Pacis, *Book* II. *Ch.* 10.

tor might come and demand it. It is enough that, if we come to the Knowledge that what we poſſeſs is another Perſon's, we then give notice to the Proprietor, that it is in our Poſſeſſion, and that we are ready to deliver it up to the right Owner. And in this Caſe, we are not bound to reſtore it, unleſs we are repay'd the neceſſary Charges we have been at in procuring, or preſerving it; which we may juſtly demand to be reimburſed, or ſtop the Thing 'till Satisfaction be made. And the Duty of *Reſtitution* of which we are ſpeaking, is ſo indiſpenſably neceſſary, that it ſets aſide all private Ingagements or Contracts to the contrary, and takes away all Right that may ſeem to ariſe from any ſuch private Obligations: As for Inſtance, Should a *Thief* truſt and depoſite with me, upon my Promiſe of Redelivery, ſomewhat that he has ſtollen, I being altogether ignorant of the Matter; if after this, the *Right Owner* appears, the ſame is to be reſtor'd to *him*, and not to the *Thief*.

III. *Reſtitution Part conſum'd.* L. N. N. l. 4. c. 13. § 6.

BUT *if any Thing belonging to another, which yet we came by fairly and honeſtly, be waſted and conſum'd, 'tis our Duty to reſtore only ſo much to the Owner as we have made Profit or Advantage to our ſelves from it.* All that lies upon us to do herein, being to refund ſo much as we have gain'd thereby, that ſo we may not be the richer by another Man's undeſerved Loſs.

IV. *Concluſions. Firſt.* L. N. N. l. 4. c. 13. § 7.

FROM theſe Premiſſes, we may deduce the following Concluſions: 1. *A Preſumptive Owner*, (or one who without any Covin on his Part, becomes the Poſſeſſor of what belongs to another Man) *is not obliged to make any Reſtitution, if the Thing periſhes*; becauſe neither the Thing it ſelf is

is in his Power, neither has he receiv'd any Gain or Advantage thereby.

V. *Second.* L. N. N. l. 4. c. 13. § 8.

2. SUCH a Preſumptive Owner is obliged *to make Reſtitution, not only of the Thing it ſelf, but alſo of the Fruits and Profits, which are in being at the Time.* For to whomſoever the *Thing* really belongs, to the ſame likewiſe the *Profits* and *Advantages* thence ariſing do accrew. Nevertheleſs, it is lawful for the Poſſeſſor to deduct what Charges he has been at upon the Thing, or upon its Culture and Improvement, by means whereof it has produced thoſe Fruits and Profits.

VI. *Third.* L. N. N. l. 4 c. 13. § 9.

3. A Preſumptive Owner is obliged *to make Reſtitution of the Thing, and of the Fruits and Profits of it that are conſumed, if otherwiſe he would have conſum'd as much of his own, and can recover the Value thereof from him of whom he received Poſſeſſion.* For otherwiſe he would inrich himſelf, whilſt by ſpending what belongs to another, he ſpares his own.

VII. *Fourth.* L. N. N. l. 4. c 13. § 10.

4. A Preſumptive Owner is not oblig'd *to make good the Fruits and Profits which he might have made of the Thing in his Poſſeſſion, but neglected ſo to do:* Becauſe he has not the Thing it ſelf, nor any Thing in Lieu thereof, and he muſt be conſider'd, to have done by it, as he would have done by that which was *truly* his own.

VIII. *Fifth.* L. N. N. l. 4. c. 13. § 11.

5. IF a Preſumptive Owner *makes a Preſent or Donation of any Thing belonging to another, which was given to himſelf, he is not bound to reſtore it*; unleſs he had been *obliged* in Duty to have given the like Value. For in ſuch a Caſe, he would be a Gainer, by ſaving what he muſt have given of his own.

IX. *Sixth.* L. N. N. l. 4. c. 13. § 12.

6. If a Presumptive Owner *makes over what he hath purchased of another Man, upon a valuable Consideration, he is not bound to make Restitution*; unless so far as he has made any Advantage by it.

X. *Seventh.* L. N. N. l. 4. c. 13. § 13.

7. A Presumptive Owner is obliged *to restore that which belongs to another, tho' he bought it upon a valuable Consideration*; nor can he demand of the *true Owner* the Price he paid for it, but only of him from whom he had it; unless so far as the Charges which the Owner must necessarily have been at, in regaining the Possession of his Right; or that otherwise he did freely promise some Reward for the Recovery.

XI. *Things found.* L. N. N. l. 4. c. 13. § 15.

Whosoever happens to *find* any Thing belonging to another, which, 'tis probable, the right Owner lost against his Will, he cannot take it up with an Intention to detain it from him when he requires it. But if the Owner appear not, he may fairly keep it himself.

CHAP.

CHAP. XIV.

Of the Price and Value of Things.

I. *Price.* L. N. N. l. 5. c. 1. § 1.

AFTER *Property* was introduced into the World, all Things not being of the ſame *Nature*, nor affording the ſame *Help* to Human Neceſſities; and every Man not being ſufficiently provided with ſuch Things as were neceſſary for his Uſe and Service, it was early brought into Practice among Men to make *mutual Exchanges* of one Thing for another. But becauſe it very often happened, that Things of a *different Nature* and *Uſe* were to be transferred; leſt either Party ſhould be a Loſer by ſuch *Exchanging*, it was neceſſary, by a common Agreement or Conſent among themſelves, to aſſign to Things a certain *Quantity* or *Standard*, by which thoſe *Things* might be compar'd and reduced to a Balance between each other. The ſame alſo obtained as to *Actions*, which it was not thought good ſhould be done *gratis* by one Man for another. And this *Quantity* or *Standard* is that which we call *Price* or *Value*.

II. *Price twofold.* L. N. N. l. 5. c. 1. § 3.

THIS *Price* is divided into *Common* and *Eminent*; The *Firſt* is in *Things* or *Actions* which come within the compaſs of *ordinary Commerce*, according as they afford either Uſefulneſs or Delight to Mankind. But the other is in *Money*, as it virtually contains the Value of all Things and Works, and is underſtood to give them their common Eſtimate,

III. *Common Value.* L. N. N. 1. 5. c. 1. § 4.

THE natural Ground of the *Common Value*, * is that † *Fitneſs* which any Thing or Action has for ſupplying, either mediately or immediately, the *Neceſſities* of Human Life, and rendring the ſame more *eaſie* or more *comfortable*. Hence it is we call thoſe Things which are not of any *Uſe* to us, *Things of no Value*. There are nevertheleſs ſome *Things moſt uſeful* to Human Life, which are not underſtood to fall under any *determinate Price* or *Value*; either becauſe they are or ought to be exempted from Dominion and Property, or becauſe they are not capable of being exchanged, and therefore cannot be traded for; or elſe, becauſe in Commerce they are not otherwiſe regarded than as Appendages to be ſuppoſed of courſe to belong to another Thing. Beſides alſo, when the Law of God or Man places ſome Actions above the Reach of Commerce, or forbids that they ſhould be done for a Reward, it is to be underſtood that the ſame Laws have ſet them without the Bounds of Price or Valuation. Thus the Upper Regions of the *Air*, the *Sky*, and the *Heavenly Bodies*, and e-

* See *Grotius de Jure Belli & Pacis*, l. 2. c. 12. § 14.

† Our Author here gives an imperfect Account of the proper and intrinſick Value of Things. For Things capable of Valuation or Price, ought not only to be of ſome Uſe and Service to human Life, if not really, yet at leaſt in the Opinion and Fancy of thoſe who deſire them; but alſo they ought to be of ſuch a Nature, as not to be ſufficient for the Occaſions and Demands of every one. The more any Thing is uſeful or ſcarce, in this Senſe, the greater is its intrinſick Price or Value. Nothing can be more uſeful to human Life than Water, yet it never bears any Price or Value, unleſs in ſuch Places, or under ſuch Circumſtances, as make it not ſufficient for every one's Uſe, or difficult to be come at.

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ven the vaſt *Ocean* are exempt from Human Property, ſo that no Rate or Value can be put upon them. So there is no Rate or Price to be ſet upon a *Freeman*, becauſe Freemen come not within the Compaſs of Commerce. Thus the Lying open to the Sun, a clear and wholeſome Air, a pleaſant Proſpect to the Eye, the Winds, Shades, and the like, conſider'd ſeparately in themſelves, bear no Price, becauſe they cannot be enjoy'd and purchas'd ſeparately from the Lands they belong to; but yet of what Moment they are in raiſing the Value of Lands and Tenements to be purchas'd, no Man is ignorant. So likewiſe 'tis unlawful to ſet any Rate or Price on *Sacred Actions*, to which any moral Effect is aſſign'd by *Divine Inſtitution*; which Crime is call'd *Simony*. And it is great Wickedneſs in a *Judge* to expoſe *Juſtice* to Sale.

IV. *Inhanſing or Debaſing a Price.* L. N. N. l. 5. c. 1. § 6.

Now there are various Reaſons, why the Price of one and the ſame Thing ſhould be *increas'd* or *diminiſh'd*, and why one Thing ſhould be preferr'd before another, though it may ſeem to be of *equal* or *greater Uſe* to Human Life. For here the *Neceſſity* of the Thing, or its extraordinary *Uſefulneſs*, is not always regarded; but, on the contrary, we ſee thoſe Things are of the leaſt Account or Value, without which Human Life is leaſt able to ſubſiſt; and therefore, not without the ſingular Providence of Almighty God, *Nature* has been very *bountiful* in providing *plentiful* Store of thoſe Things. But the *Rarity* or *Scarceneſs* of Things conduces chiefly to the inhanſing their Value; which is the more look'd upon, when they are brought from remote Countries. And hence the wanton Luxury of Mankind has ſet *extravagant Rates* upon

upon many Things which Human Life might very well be without; for Inſtance, upon *Pearls* and *Jewels*. But the Prices of Things, which are of *daily Uſe*, are then chiefly rais'd when the *Scarcity* is join'd with the *Neceſſity* or *Want* of them. The Prices of *Artificial Things*, beſides their *Scarceneſs*, are for the moſt Part inhans'd by the ingenious *Contrivance* and Curioſity of *Art*, that is ſeen in them, and ſometimes by the Fame and Renown of the Artificer, the Difficulty of the Work, the Want of Artiſts in that Way, and the like. The Prices of *Works* and *Actions* are rais'd by their Difficulty, Neatneſs, Uſefulneſs, Neceſſity, by the Scarcity, Dignity, and Ingenuity of the *Authors* of them; and laſtly, by the Eſteem and Reputation which that Art has gotten in the World. The *Contrary* to theſe are wont to *diminiſh* the Price of Things. Sometimes again, there may be ſome certain Thing, which is not *generally* much eſteem'd, but only by ſome *particular Perſons*, out of a peculiar Inclination; for Example, becauſe he, from whom we had it, is mightily *belov'd* by us, and that it was given as a *Token* of his particular Affection to us; or becauſe we have been *accuſtom'd* thereto, or becauſe it is a *Remembrancer* of ſome remarkable Accident, or becauſe by the Help thereof, we have eſcap'd any extraordinary *Danger*, or becauſe the Thing was made by *Our ſelves*. And this is called *The Eſtimate of ſingular Affection.*

V. *Particular Prices Legal.* L. N. N. l. 5. c. 1. § 8.

BUT there are other Circumſtances likewiſe to be conſider'd in *ſtating* the Rates and Prices of *particular Things*. And among thoſe indeed, who live in a Natural Independance on any other, the Prices of particular Things are determin'd no otherwiſe

otherwiſe, than by the *Will* of the *Perſons contracting*; ſince they are intirely at their own Liberty to make over or to purchaſe what they pleaſe, nor can they be controlled in their Dealings by any ſuperior Authority. But in States and Governments the *Prices of Things* are determin'd two ſeveral Ways: The *Firſt* is by an *Order* from the *Magiſtrate*, or ſome *particular Law*; the *Second* is by the common *Eſtimate* and *Judgment* of Men, or according as the *Market* goes, together with the *Conſent* and *Agreement* of thoſe who contract among themſelves. The former of theſe by ſome is call'd the *Legal*, the other the *Vulgar Price*. Where the *Legal Rate* is fix'd for the ſake of the *Buyers*, as it is for the moſt part, there it is not lawful for the *Sellers* to exact *more*; though they are not forbidden, if they will, to take *leſs*. So where the Rate of any *Labour* or *Work* is tax'd by the Publick Magiſtrate for the ſake of thoſe who have Occaſion to hire, it is not lawful for the Workman to demand *more*, though he be not prohibited to take *leſs*.

VI. *Vulgar Price.* L. N. N. l. 5. c. 1. § 9.

BUT the *Vulgar* Price, which is not fix'd by the Laws, admits of a certain *Latitude*, within the Compaſs whereof more or leſs may be, and often is, either taken or given, according to the *Agreement* of the Perſons *dealing*; which yet for the moſt part, goes according to the Cuſtom of the *Market*. Where commonly there is Regard had to the Trouble and Charges which the Tradeſmen generally are at, in the bringing home and managing their Commodities, and alſo after what manner they are bought or ſold, whether by Wholeſale or Retail. Sometimes alſo on a ſudden the Common Price

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is alter'd by reaſon of the *Plenty* or *Scarcity* of *Buyers*, *Money*, or the *Commodity*. For the *Scarcity* of Buyers and of Money, (which on any particular Account may happen) and the Plenty of the Commodity, may be a Means of *diminiſhing* the Price thereof. On the other hand, the Plenty of Buyers and of Money, and the Scarcity of the Commodity, *inhanſes* the ſame. Thus as the Value of a Commodity is leſſen'd, if it *wants* a Buyer, ſo the Price is augmented when the Poſſeſſor is ſolicited to ſell what otherwiſe he would not have parted with. Laſtly, it is likewiſe to be regarded, whether the Perſon offers *ready Money*, or deſires *Time* for Payment; for Allowance of *Time* is Part of the *Price*.

VII. *Price eminent.* L. N. N. l. 5. c. 1. § 12.

But after Mankind degenerated from their primitive Simplicity, and introduced into the World ſeveral kinds of Gaining, it was eaſily diſcern'd, that that *Common* and *Vulgar* Price was not ſufficient for the diſpatching the Buſineſs of Men, and for the carrying on of Commerce, which then daily increas'd. For at firſt all Kind of Trading conſiſted only in *Exchanging* and *Bartering*, and the Labours of others could no otherwiſe be valued than by Work for Work, or ſome Thing given in Hand for Recompence. But after Men began to deſire ſo many ſeveral Things for *Convenience* or *Pleaſure*, it was not eaſie for every one to become Maſter of That which another would be willing to take in Exchange, or which might be of equal Value to the Things he wanted from him. And in civiliz'd States or Societies, where the Inhabitants are diſtinguiſh'd into *ſeveral Stations*, there is an abſolute

lute Neceſſity there ſhould be different Degrees and Sorts of Men, which, if that ſimple and plain Way of *bartering* of *Things* and *Works* had been ſtill in Uſe, could not, or at leaſt, not without great Difficulty, ſupport themſelves. Hence moſt Nations, which were pleaſed with a more ſumptuous Way of Living, thought fit, by Publick Conſent, to ſet an *Eminent Price* or *Value* upon ſome Certain Thing, whereby the *Common* and *Vulgar* Prices of other Things ſhould be meaſured, and wherein the ſame ſhould be virtually contain'd. So that by Means of this *Thing*, any one may purchaſe to himſelf whatſoever is to be ſold, and eaſily manage and carry on any Kind of Traffick and Bargain.

VIII. *Gold, Silver, &c.* L. N. N. l. 5. c. 1. § 13.

FOR this purpoſe, moſt Nations choſe to make uſe of the nobler Kind of *Metals*, and ſuch as were not very Common; becauſe theſe being of a very compacted Subſtance, they cannot eaſily be *worn out*, and admit of being *divided* into many minute Parts; nor are they leſs proper to be *kept* and *handled*; and for the *Rarity* of 'em are equivalent to many other Things. Altho' ſometimes for Neceſſity, and by ſome Nations for Want of *Metals*, other *Things* have been made Uſe of inſtead of *Money*.

IX. *Coin.* L. N. N. l. 5. c. 1. § 14.

MOREOVER, in Communities, it is only in the Power of the Chief Magiſtrates to aſſign the *Value* of *Money*; and thence *Publicks Stamps* are wont to be put upon them. Nevertheleſs, in the aſſigning thereof, reſpect is to be had to the Common Eſtimate of the *Neighbouring Nations*, or of thoſe with whom we have any *Traffick* or *Commerce*. For otherwiſe,

wiſe, if the State ſhould ſet *too high a Value* on their Money, or if they ſhould not give it a *juſt* and *true Allay*, all Commerce with Foreign Nations, which could not be carried on by *Exchange* or *Barter* alone, would be at a Stand. And for this very Reaſon, the Value of Money is not raſhly to be *alter'd*, unleſs a very great Neceſſity of State require it. Tho' as Gold and Silver grow more plentiful, the *Value* of *Money*, in Compariſon to the Price of Land, and Things thereon depending, is wont, as it were inſenſibly and of its ſelf, to grow lower.

CHAP. XV.

Of thoſe Contracts in which the Value of Things is pre-ſuppoſed; and of the Duties thence ariſing.

I. *Pacts and Contracts.* L. N. N. l. 5. c. 2. § 1.

A *PACT* or *Agreement* in general, is the Conſent and Concurrence of Two or more in the ſame *Reſolution.* But becauſe oftentimes ſimple *Agreements* are contra-diſtinguiſh'd to *Contracts*, the Difference ſeems chiefly to conſiſt herein, That by *Contracts* are underſtood ſuch Bargains as are made concerning *Things* and *Actions*, which come within the compaſs of *Commerce*, and therefore ſuppoſe a *Property* and *Price* of Things. But ſuch Covenants as are concluded upon, about other Matters, are called by the common Term of *Pacts* or *Agreements.*

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* Although even to ſome of theſe is promiſcuouſly given the Name of *Pacts* and *Contracts*.

II. *General Diviſion of Contracts.* L. N. N. l. 5. c. 2. § 8.

CONTRACTS may be divided into *Gratuitous* and *Chargeable*. The former Sort affords *gratis* ſome Advantage to one of the Parties contracting: the latter ſubjects each of the Parties contracting to ſome Charge, or lays upon them ſome Condition or Obligation equally burdenſome to them both; in which Caſe, nothing is done or delivered by either Party, but with a Proſpect of receiving an Equivalent.

III. L. N. N. l. 5. c. 4. §. 1.

OF *Gratuitous* Contracts, there are three Sorts; a *Commiſſion*, a *Loan*, and a *Charge*.

A *Commiſſion* is, *When any one takes upon himſelf* gratis, *and in mere good Will, to tranſact the Buſineſs of his Friend, who requeſts this Trouble of him on the Account of Friendſhip only.* And this may be done two Ways; firſt, When the Method of tranſacting the Buſineſs is *preſcribed* to the Perſon who is ſo kind as to undertake it; and, ſecondly, When it is wholly left to his *Judgment* and *Diſcretion*.

BUT as no one would commit the Management of his Affairs to any one but a Friend, and one of whoſe Honeſty and Integrity he has a good Opinion; ſo he who undertakes this Truſt, ought to be careful not to abuſe this Confidence repoſed in him; but to execute it with the greateſt Care, and with the utmoſt Fidelity. But then, on the other hand, he who has given him this Commiſſion, ought to prevent its being any Loſs to him that executes it, by repaying him any Expences he is at in the Execution

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* *Grotius de Jure Belli & Pacis, lib. 2. cap. 12.*

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of it, and likewiſe by ſatisfying him for any Loſs he may ſuffer in his own Affairs, while he ſpends his Pains and Time thus in Friendſhip to him.

IV. *Of Loans.* L. N. N. l. 5. c. 4. § 6.

WHEN *we give to another the free Uſe of what is ours, without any Conſideration for the Uſe of it,* this is called a *Loan*; and the Rules to be obſerved in this Caſe, are:

1. WE muſt take all poſſible Care moſt diligently to look after and preſerve intirely the Thing lent us.

2. WE muſt put it to no other Uſes, nor detain it any longer Time, than the Proprietor is willing.

3. WE muſt reſtore it to the Owner intire, and in the ſame Condition we received it; or at leaſt with no other Detriment than what it muſt of Neceſſity receive by the common and ordinary Uſe of it.

4. IF after a Thing is lent us for a certain Time, ſomething, not foreſeen at the Time it was lent, ſhould fall out, ſo that the Proprietor wants it before the Time he had lent it us for, we are to reſtore it without Delay, as ſoon as ever it is required of us.

5. IF the Thing lent us, comes to any Damage, or is deſtroyed by any unforeſeen and unavoidable Accident, and not by any Fault of ours, we are not obliged to make it good, if it be reaſonable to think, it would have been in the ſame manner damaged or deſtroyed, had it been in the Proprietor's Cuſtody, as it was in ours. But if it lay in our Power to have prevented ſuch Damage or Loſs, then we ought to make Reſtitution to the Proprietor to the full Value,

Value, * ſince it is very unreaſonable in us to make any one loſe what is his, only for being ſo kind to us, as for our ſakes, to deprive himſelf of the Uſe of it.

He that lends any Thing to another, lies under no other Obligation to the Perſon he lends it to, but this only; If the Borrower has been at any neceſſary Charge, more than what the ordinary Uſe of the Thing requires, in preſerving it, then this extraordinary Expence ought to be made good to him by the Proprietor.

V. *Depoſit or Truſt.* L. N. N. l. 5. c. 4. § 7.

The Third and Laſt Sort of gratuitous Contracts, is a *Charge*, *Truſt*, or *Depoſit:* Which is, *When we commit any Thing of our own, or which we have any manner of Title to, or Intereſt in, to the Truſt and Care of another Perſon, to keep the ſame* Gratis: And what the Perſon's Duty is, to whom the Depoſit is made, will eaſily be underſtood.

1. The Thing thus truſted in his Hands, muſt be carefully looked after, nor muſt any Uſe be made of it, without the Knowledge and Conſent of the Proprietor, if it can in any ways receive Damage by ſuch uſing it; as alſo if it be any Profit or Benefit to the Proprietor to have it kept concealed from any one's Sight: And if the Perſon intruſted ſhall take the Liberty of uſing it, he ought to make good any Damage or Diſadvantage that ſhall accrue from the Uſe of it to the Owner. Likewiſe, it is not juſt to

* There is, in Caſes of this Nature, always a tacit Agreement, by Virtue of which, he that borrows any Thing, ingages to reſtore the Thing lent, either in Kind, or to make Amends by ſomething of equal Value. *See L. N. N. l. 5. c. 4. § 6.*

untye, unſeal, or otherwiſe open any Thing we are intruſted withal, that is ſealed or ty'd up, or to take it out of any Box, Cheſt, or other Thing in which the Owner had incloſed and ſecured it, when he put it into our Hands.

2. We ought immediately to reſtore any Thing depoſited with us, as ſoon as ever the Proprietor claims it; at leaſt, unleſs the Redelivery of it, at ſuch Time it is ſo claimed, ſhould be a real Prejudice to the Claimant, or to ſome other Perſon. But to deny that we have it, when the Owner comes to reclaim what he truſted us with, is a moſt infamous Piece of Wickedneſs, and even more baſe than Theft it ſelf: And it is yet a more deteſtable Crime, to withold or diſown a *miſerable Depoſit*; that is, what is put into our Hands in the Time of any Misfortune, during the Danger of Fire, or in the Midſt of Tumults and Confuſions, or the like Calamities.

He who makes the Depoſit on his Part, ought to re-imburſe, to the Perſon with whom it is made, all the Charges that he has neceſſarily laid out upon the Thing depoſited, while it continued in his Hands.

VI. *Equality in all chargeable Contracts.* L. N. N. l. 5. c. 3. § 1.

In all *Contracts that are purely chargeable*, and have nothing gainful in them, where the Law or the Market hath fix'd the Prices of Things, a *juſt Equality* is to be obſerved, that is, one Party ought to receive as much Benefit as the other; and if it happens, that one receives leſs than the other, he has a Right to demand the Reſt, which if denyed him by the other Party, he is at Liberty to ſet aſide the Contract.

Now to find out and adjuſt this *Equality*, it is neceſſary that the Parties contracting be each of them

them alike thoroughly acquainted with the Commodity about which they are treating, and with the ſeveral Qualities of it; and therefore whoſoever is going, by way of Contract, to make over the Property of a Thing to another, is indiſpenſably obliged to expoſe not only the good Qualities of it, but alſo, to the beſt of his Knowledge, the Faults and Defects of it; ſince otherwiſe no juſt Price or real Value of the Thing can be aſſign'd. But this is not to be extended to minute and circumſtantial Matters, which affect not the Subſtance of the Thing; nor need the Faults already known to the Buyer, be mention'd to him; for if, knowing the Faults, he purchaſes the Thing, ſuch Defects do not annull the Contract, which ſhall ſtand good, and the Buyer muſt be contented with the Inconvenience he has conſented hereby to bring on himſelf.

VII. *If an Inequality is diſcover'd after the Bargain is made, it muſt be redreſs'd.* L. N. N. l. 5. c. 3. § 9.

THE Equality we have been mentioning, is ſo abſolutely neceſſary in all *chargeable Contracts*, that although in making ſuch a Contract, all the Faults of the Thing contracted for, have been fairly expos'd, and nothing demanded more than was really believed to be the juſt Value of the Thing; yet if afterwards there appears to have been an Inequality, without any Fault of the Contractors, (as ſuppoſe ſome Defect or Blemiſh lay undiſcover'd, or there was ſome Miſtake in the Price) it ought to be corrected, and he that has too much, muſt make Amends to the Sufferer. In *notorious Abuſes* of this Kind, the Laws of every Country have made Proviſion for Reparation; but in leſſer Breaches of this Duty, they are ſilent, for the avoiding a Multitude of unneceſſary Suits, ſuppoſing herein, that every

Body will take Care, in his own Concerns, not to be impos'd upon.

VIII. *Bartering* L. N. N. l. 5. c. 5. § 1.

Now among *chargeable Contracts*, or Covenants which imply ſomewhat to be done or given on both Parts, the moſt ancient, and that whereby Trading and Commerce was carried on before the Invention of Money, was *Permutation* or *Bartering*, whereby, on each Side, ſomething was given for ſome other Thing equivalent thereto. Altho' at this Day, ſince the Invention of Money, that Sort of *Exchange* is chiefly practis'd among Merchants, whereby Things are not ſimply compar'd between themſelves, but they are firſt reduced to Money, and afterwards deliver'd as ſo much Money. But *reciprocal Donation* is a different Sort of a Thing from the Contract of Barter; for in this there is no Neceſſity that an *Equality* ſhould be obſerv'd.

IX. *Buying and Selling.* L. N. N. l. 5. c. 5. § 2.

Buying and *Selling*, is, When for Money the Property of any Thing is acquired, or elſe ſuch a Right as is equivalent thereto; of which Kind this is the moſt plain and obvious; When the Buyer, after the Value is agreed upon, immediately pays down the Price, and the Seller thereupon delivers the Commodity. Yet oftentimes the Agreement is made ſo, that the Commodity ſhall be immediately delivered, and the Price thereof paid at a certain Time. And ſometimes the Price is agreed upon, but the Delivery of the Thing or Commodity is to be within a certain Time limited. In which Caſe, it ſeems but Equity, that before the Time be elaps'd, the Seller ſhould ſtand to the Hazard of it; but if, after the Time is elaps'd, the Buyer makes Delay, and neglects the taking it away, then, if the Commodity periſhes, the Buyer ſhall

ſhall ſtand wholly to the Loſs thereof. Now to this of Buying and Selling, are wont to be added ſeveral other Kinds of Bargains: As that which is term'd *Addictio in diem*, whereby any Thing is ſold with this Proviſo, That it may be lawful for the Seller to accept of better Terms, offered by another within a certain Time. So alſo the *Lex Commiſſoria*, which is ſuch a Condition in any Contract, as not being perform'd within a Time limited, the Bargain becomes void. So likewiſe any Kind of Recalling, or Privilege of Recanting a Bargain, which is to be either ſo underſtood, That if the Price be laid down within a certain Time limited, or at any Time whatever is offer'd, the Buyer ſhall be obliged to reſtore it again to the Seller; or elſe ſo, as if the Thing be offer'd again, the Seller is bound to return back again the Price thereof; or ſo as if the Buyer be willing to ſell the ſame again, the firſt Seller ſhould have the Refuſal of it, before any other, which is likewiſe call'd *Jus Protimeſeos*, or the Right of Pre-emption. It is alſo cuſtomary that the Seller ſhould reſerve to himſelf a certain Portion of the Lands which he ſells, or ſome Uſe or Acknowledgement for the ſame.

THERE is another Way of Buying, which they call *Per Averſionem*, when ſeveral Things of different Prices are not valued ſingly, but at Hap-hazard, and, as it were, in the Lump.

IN that Way of Sale, which is call'd an *Auction*, the Thing is adjudged to that Perſon who, among ſeveral Bidders, offers moſt.

LASTLY, There is another Way of Buying, whereby not any certain Thing is bought, but only the probable Hopes and Expectation

thereof which implies ſomething of *Chance*; ſo as neither the Buyer, if his Expectation fails him, nor the Seller, though it much exceed, hath any Reaſon to complain.

X. *Hiring and Letting.*

HIRING and *Letting*, is, *When the Uſe of a Thing, or any Labour is granted to another, upon a certain Conſideration.*

L. N. N. l. 5. c. 6. § 1.

1. THE uſual Method is to agree beforehand, how much ſhall be received for doing the Thing propos'd; yet if any one makes no actual Bargain for what he undertakes to perform, or for the Uſe of any Thing he lends, he is ſuppos'd to expect ſo much as the common Cuſtom allows, and for that to refer himſelf to the Honeſty and Juſtice of the Perſon hiring.

2. HE who lets out a Thing, ought to take care, that it be in a ſerviceable Condition, and muſt therefore be content to undergo all Charges neceſſary to render it fit for Uſe. On the other Hand, the Perſon who hires the Thing, ought to be a good Husband in the Uſe of it; and if it be loſt or damaged by his Fault, he is reſponſible for it. And for the ſame Reaſon, he who is hired to do any Work, if by his Fault it be ſpoil'd or damaged, muſt make it good.

3. IF a Man be hired only for ſome tranſient Buſineſs, which does not require his conſtant Attendance to perform, and any Miſchance hinders him from performing what he undertook, he can have no Title to the *Wages* agreed for: But if a Man takes another into his Service for a continu'd Time, and he ſhould, by Sickneſs or other Misfortune, be hinder'd from doing what he undertook, in common Humanity,

Humanity, he ought neither to be diſcarded, nor have his Wages refus'd or abated.

4. When any Thing let out happens wholly to periſh; from that Time, the Perſon hiring is no longer obliged to pay the Wages or Stipend agreed on. But if the Thing let out, has a known, certain, and determin'd Uſe aſſigned to it, for which Uſe the Owner is obliged to make it fit and ſerviceable; in this Caſe, if by any Misfortune it becomes leſs fit and proper for this Uſe, the Owner is obliged to abate of the agreed Price in ſuch Proportion as the Thing falls ſhort of the deſign'd Uſe. Thus, for Inſtance, I *hire* a Houſe to dwell in, which my *Landlord* is obliged to make habitable; if, in this Caſe, the Violence of a Storm, or my Neighbour's Fire, ſhould intercept the Uſe of it, I may fairly with-hold, in Proportion, ſo much of the *Rent* as I ſuffer by Want of the Uſe of the Houſe. But if the Profit or Increaſe of the Thing farmed out be uncertain, and have any Thing of Chance attending it, wherein, as a large Increaſe happens to the Advantage of the Hirer, ſo a ſmall one is to his Loſs; in ſuch Caſe there can be nothing deducted from the Penſion in Strictneſs of Law, upon the Account of Barrenneſs, eſpecially ſince a Dearth of one Year may be recompenced by the Plenty of another: Unleſs thoſe Accidents, which prevent the Increaſe, do but very rarely happen, and the Perſon hiring be preſumed not to have intended to run any manner of Risk; and if ſo, it is but equitable that his Rent be abated, when ſuch uncommon and unforeſeen Accidents happen.

XI. *Things lent.* L. N. N. l. 5. c. 7.

In a Contract of *Things* lent, Something is given to a certain Perſon upon this Condition, That he be obliged to reſtore the ſame *Kind* after a certain Time in the ſame *Quantity* and *Quality*. Now thoſe Things which are uſually lent, are called *Fungibiles*, that is, ſuch Things as are capable of being repaid in Kind, though not in *Specie*; becauſe any Thing of that Kind may ſo perform the Part of another Thing, that he who receives any Thing of that *Kind* in the ſame *Quantity* and *Quality*, may be ſaid to have receiv'd the *ſame*, which he gave. The ſame Things are likewiſe determined and ſpecified by Number, Weight, and Meaſure, in which Reſpect alſo they are commonly called *Quantities*, as they are contra-diſtinct to *Species*. Now a Thing is lent either *gratis*, ſo as no more is to be received than was deliver'd; or elſe for ſome Profit or Advantage, which is call'd *Uſury*; and which is no Ways repugnant to the Law of Nature, provided it be moderate, and proportionable to the Gain, which the other Perſon makes of the Money or the Thing lent; or to that Gain I my ſelf might have made with the ſame Money; or to the Loſs I ſuffer by the Want of the preſent Uſe of it; or, laſtly, that it be not exacted of *Poor Men*, to whom a Thing lent, is ſometimes as good as an *Alms*.

XII. *Partnerſhip.* L. N. N. l. 5. c. 8.

In a Contract of *Partnerſhip*, Two or more join together their *Money*, *Wares*, or *Works*, with an Intention that every one ſhould receive a proportionable Share of the Profit; and if there happens to be any Loſs, that likewiſe muſt be born ratably by each Party. In which indK of Society, as all Parties are obliged to Faithfulneſs

Faithfulneſs and Induſtry; ſo no Party muſt break off the Partnerſhip before the Time, or to the Detriment of his Partner. But when the Time of the Partnerſhip is expired, after the Gain and Loſs is allow'd, each Party is to receive what Stock he put in. But if one Perſon puts in *Money* or *Goods*, and the other contributes his *Labour*, we muſt conſider, after what Manner ſuch a Contribution was made. For when one Man's *Labour* is only concern'd about the Managing and Diſpoſing of the other Perſon's *Money* or *Goods*, the Shares of the Gain are ſo to be determin'd, as the Profit of the *Money* or *Commodity* bears Proportion to the Value of the *Labour*; the *Principal* ſtill remaining the Property of him only, who firſt contributed it. But when any Labour is beſtow'd in the *Improvement* of any Commodity, which is put in by another, he is ſuppos'd to have ſuch a Share in the Thing it ſelf, as is proportionable to the *Improvement* it has received. Again, when Men ingage all that they have in any Joint-Stock, as each of the Partners muſt faithfully bring into the Account the Profits they have made; ſo alſo every one of them is to be maintain'd out of the Joint-Stock according to their Condition. But when the Partnerſhip is broken off, the Diviſion of the Goods is made ratably, according as each Party at firſt brought in; without any Regard had, by whoſe Goods any Gain or Loſs happened to the Company, unleſs before-hand it was otherwiſe agreed.

XIII. *Contracts upon Chance.*

THERE are likewiſe ſeveral Contracts which imply a *Chance*: Amongſt which may be reckon'd

L. N. N. l. 5. c. 9. reckon'd * *Wagers*, when the Certainty of any Event, which is not yet known by either Party, is affirmed by one, and denied by the other, a Certain Value being laid on both Sides, it is adjudg'd to that Perſon, to whoſe Aſſertion the Event is found to agree. Hitherto may alſo be referr'd all Sorts of † *Games*, wherein we play for any Thing of Value. Among which, thoſe have the leaſt Chance which contain a Trial of *Wit*, *Dexterity*, *Skill*, or *Strength*. In ſome of theſe *Skill* and *Chance* have both a like Share. In others, *Chance* does chiefly determine the Matter. Altho' it is the Part of the Civil Magiſtrate to conſider how far ſuch Kind of Contracts may be tolerated, as conſiſtent with the publick or private Good. Among theſe we may reckon the various Sorts of *Lotteries*; as either when ſeveral Men, having paid for a Thing by Money laid down jointly, refer it to a Deciſion by Lot, which of them ſhall have the Whole; or when a Box or Pot of Lots is made Uſe of, into which a certain Number of Lots or Papers, both Blanks and Prizes are put, and for ſome ſet Price, Liberty is granted of drawing them out, ſo that the

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* A Wager ſhall be deem'd Good, though one of the Parties, who lay the Wager, knows perfectly the Truth of what he lays upon; unleſs he pretends himſelf ignorant or doubtful about it, in order to draw the other Party on to lay with him. See *L. N. N. l.* 5. *c.* 9. § 4.

† To make Games, and other Contracts, in which there is Hazard, lawful, it is not only neceſſary that what both Parties playing run the Risk of loſing, be equal; but alſo, that the Danger of loſing, and the Hope of gaining, on both Sides, bear a juſt Proportion with the Thing plaid for.

Perſon

Perſon drawing, may receive the Prize mark'd upon the Lot. To theſe Contracts, the receiv'd Methods of * *Inſurance* have ſome kind of Affinity, which are ſuch Bargains whereby is undertaken the ſecuring from, and making good any Damage, ſo that the Inſurer, for a certain Sum of Money paid down, takes upon himſelf, and is obliged to ſatisfie for whatſoever Loſſes or Damages any Commodities may undergo in their Tranſportation to remote Countries; ſo that if it ſhall happen that they be loſt, he is bound to pay the Owner the Value of them.

XIV. *Sureties and Pledges.*

FOR the rendring of Contracts and Covenants more firm and ſecure, *Sureties* and *Pledges* are frequently made Uſe of. † A *Surety* is, when another Perſon, who is approv'd of by the Creditor, takes upon himſelf the Obligation of the principal Debtor; ſo that unleſs he makes Payment, the other muſt make it good; yet ſo, that the principal Debtor is obliged to repay him, and ſave him harmleſs. And altho' the Surety cannot ſtand bound for a greater Sum than the principal Debtor, yet nothing hinders but that the Surety is more firmly ty'd than the other, becauſe more is rely'd upon his Credit, than upon that of the principal Debtor. Yet in courſe, the principal Debtor is to be call'd upon before the Surety, unleſs he has

L. N. N. l. 5. c. 10. § 8, 9, &c.

* The Inſurer may demand more or leſs, according as there is more or leſs Hazard run. But the Contract ſhall be null, if, at the Time of making thereof, the Inſurer knew, that the Goods were ſafe arrived, or if the Owner of the Goods at that Time, knew that the Goods were loſt.

† *Grotius de Jure Belli & Pacis*, l. 3. c. 20. § 59.

wholly

wholly taken the Obligation upon himſelf; and ſuch a Perſon in the Civil Law is commonly called *Expromiſſor*, or an Undertaker. Now if ſeveral Perſons be Security for one, each of them is to be call'd upon for his Proportion only; unleſs by Accident, any one of them becomes inſolvent, or is not to be found: For in ſuch a Caſe, the others muſt be charged with his Share.

XV. *Pledge or Mortgage.* L. N. N. l. 5. c. 10. § 13.

'Tis likewiſe oftentimes cuſtomary for the Debtor to deliver, or make over to the Creditor for the ſecuring his Debt, ſome certain Thing, which is call'd a *Pledge* or a *Mortgage*, until the Debt be paid. The Intent of which is, not only that the Debtor ſhould be excited to make Payment out of a Deſire of recovering what belongs to him; but alſo that the Creditor ſhould have ſome Proſpect how he may be ſatisfied. And upon this Account, Pledges ought regularly to be of equal, or greater Value than the Debt it ſelf. Now the Things which may be offer'd as Pledges, are either Improveable, or not Improveable: As to the former Kind, there is commonly added a Covenant called *Pactum* ἀντιχρήσεως, which impowers the Creditor to enjoy the Fruits and Profits of that Pledge, inſtead of *Intereſt*: Now as to the other Sort, the *Lex Commiſſoria* takes Place; which provides, That the Pledge ſhall be forfeited to the Creditor, if Payment be not made within a certain Time limited: And this is no ways unreaſonable, when the Pledge is not of greater Value than the Debt, together with the Uſe for the intermediate Time, and provided the Overplus be reſtored to the Owner. But as the Creditor is obliged to reſtore the Pledge upon

upon Payment of the Debt; ſo in the mean Time he ought to be as careful in the preſerving thereof, as if it were really his own. And when there is no *Pactum ἀνιχρήσεως*, and the Thing be of that Nature, as to receive any Damage by Uſe, or if it be any way for the Debtor's Advantage, he ought not to make Uſe of it without his Conſent. Now a *Mortgage* differs from a *Pledge* in this, That a *Pledge* conſiſts in the Delivery of the Thing, but a *Mortgage*, though the Thing be not deliver'd, holds good by the bare Aſſignation of a Thing altogether immoveable, from which, Payment not being made, the Creditor may receive Satisfaction for his Debt.

AND thus what the Duties of Perſons contracting are, will plainly appear from the End and Nature of theſe Contracts.

CHAP. XVI.

The ſeveral Methods by which the Obligations ariſing from Contracts are diſſolved.

AMONG the ſeveral Ways of diſcharging Obligations ariſing from Contracts, and by which likewiſe the Duties and Offices which proceed from thence do utterly expire, the chiefeſt and moſt natural of all, is the *Fulfilling* or *Payment* of what was agreed upon. Where, although generally he that is the *Debtor*, is obliged

I. *Fulfilling or Payment.* L. N. N. l. 5. c. 11.

liged to make the Payment; yet, if it be perform'd by any other in *his Name* who contracted the Obligation, the ſame is diſſolv'd; ſince 'tis no ways material by what Perſon the Thing is perform'd. Yet with this Proviſo, That he who pays for another, without any Intention of beſtowing it upon him, may demand from the ſame again what he laid out upon his Account. Moreover, Payment muſt be made to that Perſon to whom it is due, or elſe to one whom he has *appointed* to receive the Debt in his Name. And laſtly, *That very Thing* muſt be perform'd or paid which was agreed upon, not any Thing elſe inſtead thereof, intire and not mangled, nor in Parcels, nor by Piece-meal; and likewiſe at the *Place* and *Time* appointed: Altho' frequently the *Courteſie* of the Creditor, or the *Inability* of the Debtor, may be the Occaſion of prolonging the Time of Payment, or receiving a Debt by little Sums at once, or elſe of accepting of one Thing for another.

II. *Compenſation.* L. N. N. l. 5. c. 11. § 5.

OBLIGATIONS are likewiſe taken away by * *Compenſation*, which is an Adjuſting or Balancing the Credit and the Debt, one againſt the other; or when the Debtor is therefore diſcharged, becauſe 'tis manifeſt that the Creditor himſelf ſtands indebted to him for ſomething that is of the ſame Kind, and of the ſame Value. Eſpecially ſince in thoſe *Things* (called *Res Fungibiles*, that is) which admit of being repaid in *Kind*, tho' not in *Specie*, an Equivalent is look'd upon to be the ſame Thing; and

* *Grotius de Jure Belli & Pacis*, l. 3. c. 19. § 15. where

where the Debt is mutual, ſince I muſt preſently return back as much as I have received, for the declining of unneceſſary Payments, it ſeems to be the moſt convenient Way ſo to order the Matter, that each Party may keep what he has. Now it is evident, that thoſe Things aforementioned, may very properly be brought to a Balance, of which the Time for Payment is either preſent, or paſt. But it is not ſo in other Things or Performances, which are of a different Nature; unleſs they are eſtimated on both Sides, and reduced to Money.

III. *Releaſe.* L. N. N. l. 5. c. 11. § 7.

AN Obligation alſo ceaſes when the Thing is *releaſed* and *forgiven* by him to whom it was due, and whoſe Intereſt it was that the Obligation ſhould have been perform'd. And this is done either *expreſsly*, by ſome certain Tokens declaring his Conſent; as by giving a Diſcharge, by giving up or cancelling the Bonds and Writings; or elſe *tacitly*, if he himſelf hinders, or is any ways the Occaſion that what is owing to him cannot be paid.

IV. *Breaking off mutually.* L. N. N. l. 5. c. 11. § 8.

THOSE Obligations are likewiſe ſometimes diſſolved, which imply ſome Performance on both Sides, *by a mutual Breaking off* before any Thing on either Side be done in the Contract; unleſs this be expreſsly forbidden by the Laws. But if any Thing is performed by one of the Parties, the Obligation in this Caſe cannot be cancelled, unleſs he who perform'd his Part, releaſes the other, or has Amends made him ſome other Way.

V. *Falſeneſs on one Side.*

BESIDES, an Obligation is not indeed properly diſſolv'd, but rather broken off by the *Falſeneſs* of either Party; for when the one does not perform what was agreed upon, neither

L. N. N. l. 5. c. 11. § 9. ther is the other obliged to make good what he undertook upon a Proſpect of the other's performing. For as to the main Things which are to be performed in Contracts, the former are always included in the latter by way of *Condition*; as if it ſhould be ſaid, I will perform this, if you perform that firſt.

VI. *Caſe altered.* L. N. N. l. 5. c. 11. § 10. OBLIGATIONS likewiſe ceaſe when that *State of Things* upon which they chiefly depended, is either *alter'd* by the Party who was obliged to perform ſomewhat, or by him to whom, or for whoſe Sake it was to be done.

VII. *Time.* L. N. N. l. 5. c. 11. § 11. SOMETIMES alſo *Time* it ſelf puts an End to ſome Obligations, whoſe Duration depends upon a certain preciſe Day; unleſs it be prolong'd by the *expreſs* or *tacit Conſent* of each Party. Yet there is a Neceſſity that the Power of exacting the Obligation within the Time limited, ſhould ſtand good.

VIII. *Aſſignment.* L. N. N. l. 5. c. 11. § 13. ANY one may make over by *Aſſignment*, his Debtor to his Creditor, provided he approves him, that he, inſtead of the other, may diſcharge the Debt. Where indeed there is required the Conſent of the Creditor, but not of that third Perſon who is the Debtor, whom I may turn over without his Knowledge or Conſent, to the other Perſon that is to accept him. For it is no great Matter *to whom* any Perſon makes Payment; but *from whom* the Debt is to be required, is very material.

IX. *DEATH.* L. N. N. l. 5. c. 11. § 12. LASTLY, By *Death* thoſe Obligations expire, which were founded in the Perſon of the Deceas'd; for the *Subject* being gone, the *Accidents* muſt neceſſarily follow, and the Performance is hereby rendred impoſſible in Nature. Yet oftentimes the Obligation that lay on the Deceas'd,

Deceas'd, is continued to the Survivors; and this, either when the Survivor takes it upon him of his own Accord to preſerve the Reputation of the Deceaſed, or for other Reaſons; or when the Goods of the Deceaſed being made over to the Heir, the Incumbrance goes along with them.

CHAP. XVII.

Of Meaning, or Interpretation.

AS in all Commands and Directions which Men receive from their Superiors, no other Obligation is derived on them from thence, but ſuch as is conformable to the Will and *Intention* of the Superior; ſo likewiſe, when any Man of his own free Will, ſets himſelf under any Obligation, he is bound only to that which himſelf *intended*, when he entered into that Obligation. But then, becauſe one Man cannot make a Judgment of another Man's Intention, but by ſuch Signs and Actions as are apparent to the Senſes; hence, therefore, every one, *in foro humano*, is adjudged, To be *obliged to that Thing, which he may fairly be ſuppoſed to have ſuggeſted by a right Interpretation of the outward Signs made by him.* Wherefore 'tis of great Uſe for the true Underſtanding both of Laws and Covenants, and for the better Diſcharging the Duties thence ariſing, that there

I. *Rules for Interpretation neceſſary.* L. N. N. l. 5. c. 12.

ſhould be laid down * *Certain Rules for the true Interpretation of Words*, eſpecially they being the moſt common and ordinary Signs whereby we expreſs our Mind and Intention.

II. *Popular Terms.* L. N. N. l. 5. c. 12. § 3. CONCERNING *Common* and *Vulgar Terms*, this is the Rule: Words are generally to be taken in their moſt proper and receiv'd Signification, which they have not ſo much from Analogy and Conſtruction of Grammar, or Conformity of Derivation, as by Popular *Uſe* and *Cuſtom*, which is the Sovereign Comptroller and Judge of Speech.

III. *Terms of Art.* L. N. N. l. 5. c. 12. § 4. TERMS *of Art* are to be explain'd according to the Definitions of Perſons knowing in each Art. But if thoſe Terms are differently defin'd by ſeveral Perſons, for the avoiding of Diſputes, 'tis neceſſary that we expreſs in Vulgar Terms, what we mean by ſuch a Word.

IV. *Conjectures.* L. N. N. l. 5. c. 12. § 6. BUT for diſcovering the genuine Meaning of Words, 'tis ſometimes neceſſary to make Uſe of *Conjectures*, if either the Words in themſelves, or the Connexion of them, be ambiguous, and liable to a double Interpretation; or if ſome Parts of the Diſcourſe ſeem to contradict the other, yet ſo as by a fair and true Explanation they may be *reconcil'd*. For where there is a plain and manifeſt Contrariety, the latter Contract vacates the former.

V. *Taken from the Subject Matter.* NOW Conjectures of the Mind, and the right Meaning thereof in an ambiguous or intricate Expreſſion, are chiefly to be taken *from the Subject Matter, from the Effects and the Ac-*

* *Grotius de Jure Belli & Pacis*, l. 2. c. 16.

cidents

cidents or Circumſtances. As to the *Matter*, this is the Rule: Words are generally to be underſtood according to the Subject Matter. For he that ſpeaks is ſuppos'd to have always in View the Matter of which he diſcourſes, and therefore agreeably thereunto, the Meaning of the Words is always to be applied. L. N. N. l. 5. c. 12. § 7.

As to the *Effects* and *Conſequences*, this is the Rule: When Words taken in the literal and ſimple Senſe, admit either of none, or elſe of ſome abſurd Conſequences, we muſt recede ſo far from the more receiv'd Meaning, as is neceſſary for the avoiding of a Nullity or Abſurdity. VI. *From the Conſequences.* L. N. N. l. 5. c. 12. § 8.

FARTHERMORE, moſt probable Conjectures may be taken from the *Circumſtances*; becauſe of Conſequence every one is preſum'd to be conſiſtent with himſelf. Now theſe Circumſtances are to be conſider'd either as to their *Place*, or only as to the *Occaſion* of them. Concerning the former of theſe, this is the Rule: If the Senſe in any Place of the Diſcourſe be expreſs'd plainly and clearly, the more obſcure Phraſes are to be interpreted by thoſe plain and familiar ones. To this Rule there is another nearly related: In the Explaining of any Diſcourſe the Antecedents and Conſequents muſt be carefully heeded, to which thoſe Things that are inſerted between are preſum'd to anſwer and agree. But concerning the *latter*, this is the Rule: The *obſcure* Expreſſions of one and the ſame Man are to be interpreted by what he has deliver'd more clearly, though it was at another Time and Place; unleſs it manifeſtly appears that he has changed his Opinion. VII. *From Circumſtances.* L. N. N. l. 5. c. 12. § 9.

VIII. *The Reason of the Thing.* L. N. N. l. 5. c. 12. § 10.

IT is likewiſe of very great Uſe for finding out the true Meaning, in Laws eſpecially, to examine into the *Reaſon of that Law*, or thoſe Cauſes and Conſiderations which induced the Legiſlator to the making thereof; and more particularly when it is evident, that that was the *only Reaſon* of the Law. Concerning which, this is the Rule: That Interpretation of the Law is to be followed, which agrees with the Reaſon of that Law; and the contrary is to be rejected, if it be altogether inconſiſtent with the ſame. So likewiſe when the ſole and adequate Reaſon of the Law ceaſes, the Law it ſelf ceaſes. But when there are ſeveral Reaſons of the ſame Law, it does not follow, that if one of them ceaſes, the whole Law ceaſes too, when there are more Reaſons remaining, which are ſufficient for the keeping it ſtill in Force. Sometimes alſo the Will of the Law-giver is ſufficient, where the Reaſon of the Law is conceal'd.

IX. *Words of various Signification.* L. N. N. l. 5. c. 12. § 11.

MOREOVER, it is to be obſerv'd, That many Words have *various Significations*, one Meaning being of great Latitude, and the other more *ſtrict* and *confin'd*; and then the ſubject Matter is ſometimes of a *favourable* Nature, ſometimes *invidious*, ſometimes between both or *indifferent*. Thoſe are *favourable* where the Condition is equal on both Sides, where Regard is had to the publick Good, where Proviſion is made upon Tranſactions already ratified, and which tend to the promoting of Peace, and the like. The *Invidious*, or more diſtaſtful, is that which aggrieves one Party only, or one more than the other; that which implies a certain Penalty; that which makes any Tranſaction of none Effect, or alters what went

went before; that which promotes Wars and Troubles. That which is between both and *Indifferent* is, That indeed which makes ſome Change and Alteration in the former State of Things, but 'tis only for the ſake of Peace. Concerning theſe, this is the Rule: That thoſe Things which admit of a *favourable* Conſtruction, are to be taken in the largeſt and moſt comprehenſive Meaning; but thoſe Things which are capable of an unpleaſing Conſtruction, in the moſt literal and ſtricteſt Senſe of the Words.

X. *Conjectures extended.* L. N. N. l. 5. c. 12. § 11.

THERE are likewiſe ſome Kind of Conjectures which are elſewhere to be fetch'd than from the Words, and which are the Occaſion that the Interpretation of them is ſometimes to be *extended*, and at other times to be *confin'd*: Although 'tis more eaſie to give Reaſons why the Explanation thereof ſhould be *confin'd* and *limited*, than *extended*. But the Law may be *extended* to a Caſe which is not expreſs'd in the Law, if it be apparent, that the Reaſon which ſuits to this Caſe, was particularly regarded by the Law-giver amongſt other Conſiderations, and that he did deſign to include the other Caſes of the like Nature. The Law alſo ought to be *extended* to thoſe Caſes wherein the Subtlety of ill Men have found out Tricks in order to evade the Force of the Law.

XI. *Conjectures limited.* L. N. N. l. 5. c. 12. § 19.

NOW the Reaſon why ſome Expreſſions deliver'd in general Terms ſhould be *reſtrain'd*, may happen either from the *original Defect of the Will*, or from the Repugnancy of ſome *emergent Caſe* to the Will and Intention. That any Perſon is to be preſum'd not at firſt to have

intended any ſuch Thing, may be underſtood,

1. FROM the *Abſurdity*, which otherwiſe would follow from thence; and which, 'tis believ'd, no Man in his Wits could deſign. Hence general Expreſſions are to be reſtrain'd, inaſmuch as ſuch Abſurdity would thence otherwiſe ariſe.

2. FROM *Want of that Reaſon* which might chiefly cauſe him to be of that Mind. Hence in a general Expreſſion, thoſe Caſes are not comprehended, which do no ways agree with the ſole and adequate Reaſon of the Law.

3. FROM *Defect of Matter*, which always he that ſpeaks, is ſuppos'd to have conſider'd. And therefore all thoſe general Words are to be regarded with relation to the ſame.

XII. *Emergent Caſes*, L. N. N. l, 5. c. 12. 21. §

NOW that an emergent State of Things is repugnant to the Intention of the Perſon who made the Conſtitution, may be diſcover'd either from *Natural Reaſon*, or elſe from ſome declared Mark and *Signification* of his Meaning.

THE firſt happens, when we muſt exclude *Equity*, if ſome certain Caſes be not exempted from the univerſal Law. For *Equity* is the Correcting of what is defective in the Law by reaſon of its *Univerſality*.

AND becauſe all Caſes could neither be foreſeen, nor ſet down, becauſe of the infinite Variety of them; therefore when general Words are apply'd to ſpecial Caſes, thoſe Caſes are to be look'd upon as exempt, which the Law-giver himſelf would likewiſe have exempted, if he had been conſulted upon ſuch a Caſe.

BUT we muſt not have Recourſe to *Equity*, unleſs there be very ſufficient Grounds for it. The Chiefeſt of which, is, If it be evident, that

that the Law of Nature would be violated, if we followed too closely the Letter of that Law.

THE next Ground of Exception is, That though it be not indeed unlawful to keep to the very Words of the Law; yet, if, upon an impartial Consideration, the Thing should seem too grievous and burdensome, either to Men in general, or to some certain Persons; or else, if the Design be not of that Value, as to be purchas'd at so dear a Rate.

XIII. *Exception with Regard to Time.* L. N. N. l. 5. c. 12. § 23.

LASTLY, There are also some certain Signs of the Legislator's Will, from whence it may be certainly collected, That a Case ought to be excepted from the general Expressions of the Law; as when the Words of the Legislator in another Place, though not directly opposite to the Law now supposed to be before us, (for that would be a Contradiction) yet, by some peculiar Incident, and unexpected Event of Things, happen to oppose it in the present Case; or, which amounts to the same Thing, When there are two different Laws, which don't interfere, and which easily may and ought to be observ'd at different Times, but can't both of them be satisfy'd, when by some Chance, they call for our Obedience at the same Instant: In this Case we must observe some certain Rules to know which Law or Pact ought to give Place to the other, where both cannot be fulfill'd.

1. THAT *which is only permitted gives place to that which is commanded.*

2 THAT

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1. This Rule is not true, unless we suppose the *Permission* general, and the *Command* particular. For it is certain, on the contrary, that a particular Permission

2. THAT *which ought to be done at this preſent Time, is preferable to that which may be done at any other Time,*

3. *A Law forbidding the doing any Thing, is to be preferr'd before a Law directing the doing any Thing*: Or when an *affirmative* Precept can't be ſatisfy'd but at the Expence of a *negative* one, then the Performance of the *Affirmative*, ſhall be deferr'd or put off, 'till it ceaſes to claſh with that other which is *Negative*. Thus I am commanded to be charitable, and I am commanded not to ſteal: If I have not wherewith to be charitable, unleſs I ſteal to give away, I lye under no Obligation to be charitable at that Time.

4. IN *Covenants and Laws, which are in other reſpects Equal, that which is particular and applicable to the preſent Caſe, takes Place of that which is General.*

5. WHEN *two Duties happen to interfere at the ſame Point of Time, that which is founded upon Reaſons more honourable and beneficial is to be preferr'd.*

6. WHEN *two Covenants, one upon Oath, the other not, can't be perform'd both together, the former ought to take Place of the latter.*

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takes Place of a general Command; the Permiſſion in this laſt Caſe, being an Exception to the Command; as in the former Caſe, the Command reſtrains the Extent of the Permiſſion.

3. Here, likewiſe, it muſt be diſtinguiſh'd, whether theſe Laws forbidding or commanding, be general or particular, as was laid down in the foregoing Note.

6. This Rule is not true, unleſs in ſuch Caſe, where all other Circumſtances are exactly equal. For when two Covenants are directly oppoſite, the latter ſhall be binding, whether the former be upon Oath, or not. But if the Two Covenants are not directly oppoſite, but only in ſome Reſpects different, the particular one ſhall be preferr'd before the general one.

7. AN

7. An *Obligation imperfectly mutual, gives Place to one that is perfectly mutual and binding on both ſides.* Thus what I owe upon Contract, ought to be paid before what is due from me upon free Promiſe or Gratitude.

8. What *I am obliged to do out of Gratitude, muſt be preferr'd before what I am obliged to out of Generoſity.*

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7. Theſe Two laſt Rules are comprehended in the *Fifth*, of which they are, as is obvious, only Conſequences.

THE

Whole Duty of MAN,

According to the

LAW of NATURE.

BOOK II. CHAP. I.

Of the Natural State of Men.

I. *Condition of MAN.*

IN the next Place, we are to inquire concerning thoſe Duties which are incumbent upon a Man with Regard to that *particular State* wherein he finds himſelf ordained by Providence to live in the World. What we mean by ſuch *State*, is in general, That *Condition* or *Degree* with all its Relatives, in which Men being placed, they are therefore ſuppoſed to be obliged to theſe or thoſe Performances: And ſuch *State*, whatever it be, has ſome peculiar Rights and Offices thereunto belonging.

L. N. N. l. 1. c. 1. § 6, &c.

THE

II. *Twofold. Natural and Adventitious.* I. N. N. l. 2 c. 3. § 24.

THE *State* of Man then may be diſtinguiſh'd into either *Natural* or *Adventitious*. The natural State, by the Help of the Light of natural Reaſon alone, is to be conſidered as Threefold, Either as it regards *God our Creator*, or as it concerns *every ſingle Man* as to *Himſelf*, or as it affects *other Men*; concerning all which we have ſpoken before.

III. *Natural State Threefold. Firſt.*

THE Natural State of Man conſider'd in the *firſt* mention'd Way, is that Condition wherein he is placed by the Creator purſuant to his Divine Will, that he ſhould be the moſt excellent Animal in the whole Creation. From the Conſideration of which *State*, it follows, That Man ought to acknowledge the AUTHOR of his Being, to pay Him Adoration, and to admire the Works of His Hands; and moreover, to lead his Life after a different Manner from that of the Brutes. So that the contrary to this State is *the Life and Condition of Brutes.*

IV. *Second.* L. N. N. l. 2. c. 2. § 2.

IN the *ſecond* Way we may contemplate the Natural *State* of Man, by ſeriouſly forming in our Minds an Idea of what his Condition would be, if every one were left * *alone* to himſelf without any Help from *other* Men. And in this Senſe, the *Natural State* is oppoſed to *a Life cultivated by the Induſtry of Men.*

V. *Third.*

AFTER the *third* Way we are to regard the Natural Stare of Man, according as Men are underſtood to ſtand in reſpect to one another, merely from that common Alliance which reſults from the *Likeneſs* of their *Natures*, before any mutual Agreement made, or other Deed of

* *See* Book I, Chap. III. § 3. *and the* References *made to it.*

Man,

Man perform'd, by which one could become obnoxious to the Power of another. In which Senſe, thoſe are ſaid to live reciprocally in a *State of Nature*, who acknowledge no *common Superior*, and of whom none can pretend Dominion over his Fellow, and who do not render themſelves known to each other, either by the doing of good Turns or Injuries. And in this Senſe it is, That a *Natural State* is diſtinguiſh'd from a *Civil State*, that is, *The State of Man in a Community.*

VI. *Conſider'd again Two ways* L. N. N. l. 2. c. 2.

MOREOVER, the Property of this *Natural State* may be conſider'd, either as it is repreſented to us *notionally* and by way of *Fiction*, or as it is *really* and *indeed*. The *former* is done, when we imagine a certain Multitude of Men at the Beginning to have ſtarted up into Beings all at once without any Dependance upon one another, as it is fabled of the *Cadmean* Harveſt of Brethren; or elſe when we form a Suppoſition, that all the mutual Ties, by which Mankind are one way or other united together, were now diſſolv'd; ſo that every Man might ſet up for himſelf apart from the Reſt, and no one Man ſhould have any other Relation to his Fellow, but the Likeneſs of their Natures. But the true State of Nature, or that which is *really* ſo, has this in it, that there is no Man who has not ſome peculiar Obligations to *ſome* other Men, though with all the reſt he may have no farther Alliance than that they are Men, and of the ſame Kind; and, beſide what ariſes from thence, he owes them no Service at all. Which at this Time is the Caſe of many Kingdoms and Communities, and of the Subjects of the ſame, with reſpect to the Subjects of the other;

and

and the ſame was anciently the State of the Patriarchs, when they liv'd independently.

VII *Paternal Authority*

IT is then taken for manifeſt, that all Mankind never were univerſally and at once in the former *Natural State*; for thoſe Children who were begotten and born of the Protoplaſts, or firſt created Man and Woman, (from whom the whole Human Race derives its Original, as the *Holy Scriptures* tell us) were ſubject to the *Paternal Authority*. Not but that this Natural State aroſe afterwards among ſome People; for Men at firſt, in order to ſpread over this wide World, and that they might find for themſelves and their Cattle more ſpacious Abodes, left the Families of their Fathers, and roaming into various Regions, almoſt every ſingle Man became himſelf the Father of a Family of his own; and the Poſterity of theſe again diſperſing themſelves, that *peculiar Bond* of Kindred, and the Natural Affections thence ariſing, by little and little were extinct, and no other Obligation remain'd, but that common one, which reſulted from the Likeneſs of their Natures: 'Till afterwards, when Mankind was vaſtly multiplied, they having obſerv'd the many Inconveniences of that looſe Way of living, the Inhabitants of Places near one another, by Degrees join'd in Communities, which at firſt were ſmall, but grew ſoon greater, either by the voluntary or forced Conjunction of many which were leſſer. And among theſe Communities, the State of Nature is ſtill found, they being not otherwiſe obliged to each other, than by the common Tie of Humanity.

VIII. *Natural Liberty.*

NOW it is the chief *Prerogative* of thoſe who are in the State of Nature, that they are ſub-

ſubject and accountable to none but God only; in which reſpect alſo, this is call'd a State of *Natural Liberty*, by which is underſtood, that a Perſon ſo circumſtanced without ſome antecedent human Act to the contrary, is to be accounted abſolutely in his own Power and Diſpoſition, and above the Controll of all mortal Authority. Therefore alſo any one Perſon is to be reputed *equal* to any other, to whom himſelf is not ſubject, neither is that other ſubject to him.

And farthermore, whereas Man is indued with the Light of Reaſon, by the Guidance whereof he may temper and regulate his Actions, it follows, That whoſoever lives in a State of Natural Liberty, depends not on any other for the Direction of his Doings; but is veſted with a Right to do, according to his own Judgment and Will, any Thing he ſhall think good, and which is conſonant to ſound Reaſon.

And whereas Man, from that univerſal Inclination which is implanted in all living Creatures, cannot but, in order to the Preſervation of his Perſon and his Life, and to the keeping off whatſoever Miſchiefs ſeem to threaten the Deſtruction thereof, take the utmoſt Care and Pains, and apply all neceſſary Means to that End; and yet whereas no Man in this Natural State has any ſuperiour Perſon, to whom he may ſubmit his Deſigns and Opinions, therefore every one in this State makes uſe of his own Judgment only, in determining concerning the Fitneſs of Means, whether they conduce to his Self Preſervation or not. For though he may give ear to the Advice of another, yet it is in his Choice, whether he will approve or reject the ſame. But that this abſolute Power of Governing

verning himſelf be rightly managed, it is highly neceſſary, That all his Adminiſtrations be moderated by the Dictates of true Reaſon, and by the Rules of the Law of Nature.

IX. *Its Inconveniences.*

AND yet this Natural State, how alluring ſoever it appears to us with the Name of LIBERTY, and flattering us with being free from all manner of Subjection, was clogg'd, before Men join'd themſelves under Governments, with many *Inconveniences*; whether we ſuppoſe every ſingle Man as in that Condition, or only conſider the Caſe of the Patriarchs or Fathers of Families, while they liv'd independent. For if you form in your Mind the Idea of a Man, even at his full Growth of Strength and Underſtanding, but without all thoſe Aſſiſtances and Advantages by which the Wit of Man has rendred Human Life much more orderly and more eaſie than at the Beginning; you ſhall have before you, a naked Creature no better than dumb, wanting all Things, ſatisfying his Hunger with Roots and Herbs, ſlacking his Thirſt with any Water he can find, avoiding the Extremities of the Weather, by creeping into Caves, or the like, expoſed an eaſie Prey to the ravenous Beaſts, and trembling at the Sight of any of them. L. N. N. l. 1. c. 3. § 3.

'TIS true, the Way of Living among the Patriarchs, might be ſomewhat more comfortable, even while they contain'd their Families apart; but yet it could by no Means be compar'd with the Life of Men in a *Community*; not ſo much for the Need they might have of Things from abroad, which, if they reſtrain'd their Appetites, they might perhaps well enough bear withal; as becauſe in that State they could have

have little Certainty of any continu'd Security.

AND, that we may comprehend all in a few words, In a *State of Nature*, every Man muſt rely upon his own ſingle Power; whereas in a *Community*, all are on his Side: There no Man can be ſure of injoying the Fruit of his Labour; here every one has it ſecur'd to him: There the *Paſſions* rule, and there is a continual Warfare, accompanied with Fears, Want, Sordidneſs, Solitude, Barbarity, Ignorance, and Brutiſhneſs; here *Reaſon* governs, and here is Tranquillity, Security, Wealth, Neatneſs, Society, Elegancy, Knowledge, and Humanity.

X. *Uncertainty of the State of Nature.*

NOW though it was the Will of Nature itſelf, that there ſhould be a Sort of *Kindred* amongſt all Mankind, by Virtue of which they might be obliged at leaſt not to hurt one another, but rather to aſſiſt and contribute to the Benefit of their Fellows; yet this Alliance is found to be but of little Force among thoſe who live promiſcuouſly in a State of *Natural Liberty*; ſo that any Man who is not under the ſame Laws and Poſſibilities of Coercion with our ſelves, or with whom we live looſely and free from any Obligation in the ſaid State, is not indeed to be treated as an *Enemy*, but may be look'd upon as a *Friend*, not too freely to be *truſted*. And the Reaſon hereof is, That Man not only is accompliſh'd, with an Ability to do Miſchief to his Like, but for many Cauſes has alſo a Will ſo to do: For ſome, the Pravity of their Natures, Ambition, or Covetouſneſs, incite to make Inſults upon other Men; others, though of a meek and

L. N. N. l. 1. c. 3. § 4.

and modeſt Nature, are forced to uſe Violence either in defending themſelves from imminent Outrages, or by way of Prevention.

BESIDE that, a Rivalſhip in the Deſire of the ſame Thing in ſome; and in others, Competition for Priority in one Quality or other, ſhall ſet them at Variance. So that in this State, 'tis hardly poſſible but that there ſhould be perpetual Jealouſies, Miſtruſts, Deſigns of undoing each other, Eagerneſs to prevent every one his Fellow, or Hopes of making Addition to his own Strength by the Ruin of others.

THEREFORE as it is the Duty of every *honeſt* Man to be content with his own, and not to give Provocation to his Neighbour, nor to covet that which is his; ſo alſo it behoves him who would be as *wary* as is needful, and who is willing to take Care of his own Good, ſo to take all Men for his Friends, as not to ſuppoſe yet but that the ſame may quickly become his Enemies; ſo to cultivate Peace with all Men, as to be provided though it be never ſo ſoon changed to Enmity. And for this Reaſon, happy is that Commonwealth, where in Times of Quietneſs, Conſideration is had of Requiſites for War.

XI. *Moſt convenient Remedy in Controverſies.* L. N. N. l. 5. c. 13.

BESIDE, in the *Natural State*, if any one either will not voluntarily make good what he has *covenanted* to do, or does another an *Injury*, or if upon any other Account ſome Diſpute ariſe; there's no Man has Authority to force the naughty Perſon to perform his Bargain, to cauſe him to repair the Wrong, or to determine the Controverſy; as there is in *Communities*, where I

may have recourſe for Help to the Civil Magiſtrate.

And here, becauſe Nature allows not that upon every Occaſion we ſhould betake our ſelves to *violent Means*, even though we are very well ſatisfy'd in our Conſciences of the Juſtice of our Cauſe; therefore we are firſt to try, whether the Matter may not be compoſed after a milder Way, either by an amicable Reaſoning of the Point in Queſtion between the Parties themſelves, or by a free and unconditional Compromiſe, * or *Reference* of the Debate to *Arbitrators*. And theſe Referees are to manage the Matter with an equal Regard to both Sides, and in giving their Award, they are to have an Eye only to the Merits of the Cauſe, ſetting aſide all partial Animoſity or Affection. For which Reaſon, it is not beſt to chuſe any Man an Arbitrator in ſuch a Cauſe wherein he ſhall have greater Hopes of Profit or particular Reputation, if one Party get the better, rather than the other; and conſequently where it is his Intereſt that that Litigant, at what Rate ſoever, gain the Point. Hence alſo there ought not to be any underhand Bargain or Promiſe between the Umpire and either of the Parties, by which he may be obliged to give his Judgment on the behalf of the ſame.

Now in this Affair, if the Arbitrator cannot find out the Truth in Fact, neither from the Confeſſions of the Parties, nor from apparent Writings, nor any other manifeſt Argu-

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* See *Grotius de Jure Belli & Pacis, lib. 2. cap. 23.* §6, &c.

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ments and Signs; he muſt then inform himſelf by the Teſtimonies of Witneſſes; whom, though the Law of Nature obliges, eſpecially being uſually reinforced by the Religion of an Oath, to ſpeak the Truth; yet it is moſt ſafe not to admit the Evidence of ſuch as are ſo peculiarly affected to one Party, that their Conſciences will be forced to ſtruggle with the Paſſions either of Love, Hatred, Deſire of Revenge, any violent Affection of the Mind, or elſe ſome ſtrict Friendſhip or Dependance; all, or any of which every Man is not endued with Conſtancy enough to ſurmount.

CONTROVERSIES alſo are frequently made an end of by the *Interpoſition* of the common *Friends* of each Party, which to do, is deſervedly accounted among the beſt Actions of a good Man. For the reſt, in the *Natural State*, when Performances are not made good by either Side of their own Accord, the other ſeeks his Due after what manner he likes beſt.

CHAP. II.

Of the Duties *of the* Married State.

I. *Matrimony.* AMONG thoſe States of Man which we have call'd *Adventitious*, or in which a Man is placed by ſome antecedent human Act, MATRIMONY obtains the firſt Place. * Which alſo is the chief Repreſentation of the Social Life, and the Seed-Plot of Mankind.

L. N. N. l. 6. c. 1.

II. *Inſtituted by Nature.* AND, firſt, it is certain, That that ardent Propenſity found to be in both Sexes to each other, was not implanted in them by the All-wiſe CREATOR, merely that they might receive the Satisfaction of a vain Pleaſure; for had it been ſo, nothing could have been the Occaſion of greater Brutiſhneſs and Confuſion in the World; but that hereby Married Perſons might take the greater Delight in each other's Company; and that both might with the more Chearfulneſs apply themſelves to the neceſſary Buſineſs of Propagation, and go through thoſe Cares and Troubles which accompany the Breeding and Education of Children. Hence it follows, That all Uſe of the Parts deſtin'd by Nature for this Work, is contrary to the Law Natural, if it tends not to this End. On which Account alſo, are forbidden all Luſts for a different *Species*, or for the ſame Sex; all filthy Pollutions; and indeed, all Copulations

* *Grotius de Jure Belli & Pacis*, l. 2. c. 5. § 9. &c.

out

out of the State of Matrimony, whether with the mutual Conſent of both Parties, or againſt the Will of the Woman.

III. *Obligation to Matrimony.* L. N. N. l. 6. c. 1. § 3.

THE *Obligation* under which we lye to contract *Matrimony*, may be conſider'd either with reſpect to *Mankind* in general, or to our particular *Station* and *Relation* in the World. The Strength of the former of theſe, conſiſts in this, That the Propagation of Mankind, neither can nor ought to be kept up by promiſcuous and uncertain Copulations, but is to be limited and circumſcribed by the Laws of *Wedlock*, and only to be endeavour'd in a married State: For without this no Man can imagine any Decency or orderly Society among Men, nor any Obſervation of the Civil Rules of Life.

BUT Men *ſingly* conſider'd, are obliged to enter the Matrimonial State, when a convenient Occaſion offers it ſelf; whereto alſo not only a mature Age, and an Ability for Generation-Work is neceſſary, but there ought beſide to be a Poſſibility of lighting on a Perſon of the like Condition, and a Capacity of maintaining a Wife, and the Poſterity ſhe ſhall bring forth; and that the Man may be ſuch a one as is fit to become the Maſter of a Family.

NOT ſtill, but that any Man is excepted from this Duty, who betakes himſelf to a chaſte SINGLE LIFE, finding his Conſtitution accommodated thereto, and that he is capable in that, rather than in the Married State, to be uſeful to Mankind, or to the Commonwealth; eſpecially alſo, if the Caſe be ſo, that there is no Fear of the Want of People.

IV. *Matrimonial Contract.*

BETWEEN thoſe who are about to take upon themſelves the Married State, a *Contract* ought,

L. N. N. l. 6. c. 1. § 9.

ought, and is wont to intervene, which, if it be *Regular* and *Perfect*, conſiſts of theſe Heads:

FIRST, Becauſe the Man (to whom it is moſt agreeable to the Nature of both Sexes, that the Contract ſhould owe its Original) intends hereby to get himſelf Children of his own, not ſpurious or ſuppoſititious; therefore the Woman ought to *plight her Troth* to the Man, That ſhe will permit the Uſe of her Body to no other Man but to him; the ſame, on the other Hand, being requir'd of the Husband.

AND, Secondly, Since nothing can be more flatly contrary to a Social and Civil Life, than a vagabond, deſultory, and changeable Way of Living, without any Home, or certain Seat of his Fortunes; and ſince the Education of that which is the Off-ſpring of both, is moſt conveniently taken Care of by the joint Help of both Parents together: And whereas continual Cohabitation brings more of Pleaſure and Comfort to a Couple who are well match'd, whereby alſo the Husband may have the greater Aſſurance of his Wife's Chaſtity; therefore the Wife does moreover ingage her Faith to her Husband, That ſhe will *always cohabit* with him, and join her ſelf in the ſtricteſt Bond of Society, and become of the ſame Family with him. And this mutual Promiſe muſt be ſuppoſed to be made from the Huſband to her of the like Cohabitation, the Nature of this State ſo requiring.

BUT becauſe it is not only agreeable to the natural Condition of both Sexes, that the Caſe of the Huſband ſhould be the more Honourable of the two; but that he ſhould alſo be the Head of

of the Family, of which himſelf is the Author; it follows, That the Wife ought to be ſubject to his Direction in Matters relating to their mutual State and to their Houſehold. Hence it is the Prerogative of the Huſband, to chuſe his Habitation, and ſhe may not againſt his Will, wander abroad, or lodge apart.

YET it does not ſeem eſſentially neceſſary to Matrimony, that the Man ſhould have Power of Life and Death, or of inflicting any grievous Puniſhment, as neither of diſpoſing at his Pleaſure of all the Eſtate or Goods of his Wife: But theſe Points may be ſettled between the Married Couple, by peculiar Agreements, or by the municipal Laws of the Place.

V. *One Man and one Woman.* L. N. N. l. 6. c. 1. § 19.

NOW tho' 'tis manifeſtly repugnant to the Law of Nature, that one Woman ſhould have more Men than one at once; yet it obtain'd among the *Jews* of old, and many other Nations, that one Man might have two or more Wives. Nevertheleſs, let us allow never ſo little Weight to Arguments brought from the primitive Inſtitution of Marriage deliver'd in *Holy Writ*; * yet it will appear from *right Reaſon*, That 'tis much more decent and fit for one Man to be content with one Woman. Which has been approved by the Practice of all the Chriſtians through the World, that we know of, for ſo many Ages.

VI. *Contract perpetual.* L. N. N. l. 6. c. 1. § 20, 21.

NOR does the Nature of this ſtrict Union tell us leſs plainly, That the Bond of *Matrimony ought to be perpetual*, and not to be unlooſed,

* See *Element. juriſprud. univerſal.* l. 11. § 7. *Apol.* § 29. *Eris Scandica*, P. 48. & ſeq. p. 109.

but by the Death of one Party; except the *eſſential Articles* of the principal Matrimonial Covenant be violated, either by *Adultery*, or a wicked and diſhoneſt *Deſertion*. But for *ill Diſpoſitions*, which have not the ſame Effect with ſuch *lewd Deſertion*, it has obtained among Chriſtians, that a Separation from Bed and Board ſhall be ſufficient, without allowing any Ingagement in a new Wedlock. And one great Reaſon hereof, among others, is this, That too free a Liberty of Divorce might not give Incouragement to either Party to cheriſh a ſtubborn Temper; but rather, that the irremediable State of each, might perſuade both to accommodate their Humours to one another, and to ſtir them both up to *mutual* Forbearance. For the reſt, if any eſſential Article of the Matrimonial Contract be violated, the *wronged Party* only is diſcharged from the Obligation; the ſame ſtill binding the other, ſo long as the former ſhall think good.

VII. *Moral Impediments.* L. N. N. l. 6 c. 1. § 27.

ANY Man may contract with any Woman, where the Law makes no ſpecial Prohibition, if their Age and Conſtitution of Body render them capable of Matrimony, except ſome *Moral Impediment* be in the Way: Preſuppoſing, That he or ſhe is under a Moral Impediment, who are already married to ſome other Perſon.

VIII. *Kindred.* L. N. N. l. 6. c. 1. § 28.

AND it is accounted a Moral Impediment of lawful Matrimony, if the Parties are *too nearly allied by Blood or by Affinity*. On which Score, even by the Law of Nature, thoſe Marriages are accounted inceſtuous and wicked, which are contracted between any Perſons related in the *Aſcending* or *Deſcending* Line. And for

for thoſe in the other *tranſverſe Order*, as with the Aunt, either on the Father's or Mother's Side, the Siſter, *&c.* As alſo thoſe in *Affinity*, as, with the Mother-in-law, Step-Mother, Step-Daughter, *&c.* Not only the poſitive Divine Law, but that of moſt civiliz'd Nations, with whom alſo all Chriſtians agree, does abominate. Nay, the Special Laws of many Countries forbid Marriage even in the more remote Degrees, that ſo they may keep Men from breaking in upon thoſe which are more ſacred, by ſetting the Barrier at a greater Diſtance.

IX. *Ceremony.*

Now as the Laws are wont to aſſign to other Contracts and Bargains ſome *Solemnities*, which being wanting, the Act ſhall not be adjudged of Validity: So alſo it is in Matrimony, where the Laws require, for the ſake of Decency and good Order, that ſuch or ſuch *Ceremonies* be performed. And theſe, though not injoined by the Law Natural, yet without the ſame, thoſe who are Subjects of ſuch a Community, ſhall not conſummate a legal Matrimony; or at leaſt, ſuch Contract ſhall not be allowed by the Publick to be effectual.

X. *Mutual Duties.*

It is the Duty of a *Husband* to love his Wife, to cheriſh, direct and protect her; and of the *Wife* to love and honour her Husband, to be aſſiſtant to him, not only in begetting and educating his Children, but to bear her Part in the Domeſtick Cares. On both ſides, the Nature of ſo ſtrict an Union requires, That the Married Couple be Partakers as well in the good as ill Fortune of either, and that one ſuccour the other in all Caſes of Diſtreſs; moreover, That they prudently accommodate their Humours to each

each other; in which Matter, it is the Wife's Duty to ſubmit.

CHAP. III.

Duty *of* Parents *and* Children.

I. *Paternal Authority.* L. N. N. l. 6. c. 2.

FROM MATRIMONY proceeds POSTERITY, which is ſubjected to the *Paternal Power*, * the moſt Ancient and the moſt Sacred Kind of Authority, whereby Children are obliged to reverence their Parents, to obey their Commands, and to acknowledge their Pre-eminence.

II. *Its Foundation Twofold.*

THE Authority of Parents over their Children, hath its chief Foundation on a *Twofold Cauſe.*

FIRST, Becauſe the Law of Nature it ſelf, when Man was made a Sociable Creature, injoin'd to *Parents the Care of their Children*; and leſt they ſhould herein be negligent, Nature implanted in them a moſt tender Affection for their Iſſue. Now that this Care may be rightly managed, it is requiſite that they have a Power of ordering the Actions of their Children for their Good; becauſe theſe, as yet, underſtand not, for want of *Diſcretion*, how to govern themſelves.

NEXT, This Authority is alſo grounded on the *tacit Conſent of their Offspring.* For it may

* *Grotius de Jure Belli & Pacis*, l. 2. c. 5. § 1, &c.

fairly

fairly be preſum'd, that if an Infant, at the Time of its Birth, had the Uſe of its Reaſon, and ſaw that its Life could not be preſerv'd without the Care of the Parents, to which muſt be join'd a Power over it ſelf, it would readily conſent to the ſame, and deſire for it ſelf a comfortable Education from them. And this Power is *actually* in the Parents, then when they breed and nurſe up the Child, and form him as well as they can, that he may become a fit Member of Human Society.

III. *Which Parent has greater Right.* L. N. N. l. 6. c. 2. § 4.

But whereas the Mother concurs no leſs than the Father to the Generation of Children, and ſo the Offspring is common to both, it may be inquir'd, *Which hath the greateſt Right thereto?* Concerning which Point we are to diſtinguiſh: For if the Iſſue were begotten *not in Matrimony*, the ſame ſhall be rather the Mother's, becauſe here the Father cannot be known, except the Mother diſcover him. Among thoſe alſo who live in a State of *Natural Liberty*, and above Laws, it may be agreed, that the Mother's Claim ſhall be preferr'd to that of the Father. But in *Communities*, which have their Formation from Men, the Matrimonial Contract regularly commencing on the Man's Side, and he becoming the Head of the Family, the *Father's Right* ſhall take Place, ſo as though the Child is to pay the Mother all Reverence and Gratitude, yet is it not obliged to obey her, when ſhe bids that to be done which is contrary to the juſt Commands of the Father. Yet upon the Father's Deceaſe, his Authority over his Child, eſpecially if not of Age, ſeems to devolve upon the *Mother*, and if ſhe marry again, it paſſes to the *Step-Father*, he being eſteemed

eſteemed to ſucceed to the Truſt and Care of a Natural Father. And he who ſhall allow liberal Education to an Orphan or a forſaken Child, ſhall have a Right to exact *filial Obedience* from the ſame.

IV. *Paternal Authority diſtinguiſh'd.* L. N. N. l. 6. c. 2. § 6.

But that we may handle more accurately the *Power of Parents over their Children*, we muſt diſtinguiſh, firſt, between *Patriarchs*, or Chiefs of independent Families; and ſuch as are *Members of a Community*; and then betwixt the *Power* of a *Father*, as *Father*, and his Power as *Head of his Family*. And whereas it is injoyn'd by Nature to a *Father as ſuch*, That he bring up his Children well, in order to render 'em fit Members of Human Society, ſo long as 'till they can take Care of themſelves; hence he has ſo much Power given him over them, as is neceſſary for this End; which therefore by no means extends it ſelf ſo as to give the Parents Liberty to deſtroy their unborn Offſpring, or to caſt away or kill it when it is born. For though it is true, the Iſſue is of the Subſtance of the Parents, yet it is placed in a Human State equal to themſelves, and capable of receiving Injuries from them. Neither alſo does this Authority veſt them with the Exerciſe of a Power of Life and Death, upon Occaſion of any Fault, but only allows them to give moderate Chaſtiſement; ſince the Age we ſpeak of is too tender to admit of ſuch heinous Crimes as are to be puniſhed with Death. But if a Child ſhall ſtubbornly ſpurn at all Inſtruction, and become hopeleſs of Amendment, the Father may turn him out of his own Houſe, and abdicate or renounce him.

More-

MOREOVER, This Power, thus nicely taken, may be conſidered according to the *diverſe Age of Children.* For in their *early Years*, when their Reaſon is come to no Maturity, all their Actions are ſubject to the Direction of their Parents. During which Time, if any Eſtate fall to the young Perſon, it ought to be put into the Poſſeſſion, and under the Adminiſtration of the Father, ſo that the Property be ſtill reſerved to the Child; tho' it may be reaſonable enough that the Profits ariſing therefrom ſhould be the Father's till the other arrive at Manhood. So alſo any Advantage or Profit that can be made by the Labour of a Son, ought to accrew to the Parent; ſince with the Latter lies all the Care of maintaining and of educating the Former.

V. *Childhood.* L. N. N. l. 6. c. 2. § 7.

WHEN Children are come to *Man's Eſtate*, when they are indued with a competent Share of Diſcretion, and yet continue themſelves a Part of the Father's Family, then the Power which the Father hath comes differently to be conſidered, either as he is a *Father*, or as *Head* of the Family. And ſince in the former Caſe he makes his End to be the Education and Government of his Children, it is plain, That when they are of *ripe Years*, they are to be obedient to the Authority of their Parents, as wiſer than themſelves. And whoſoever expects to be maintain'd upon what his Father has, and afterwards to ſucceed to the Poſſeſſion of the ſame, is obliged to accommodate himſelf to the Methods of his Paternal Houſehold; the Management whereof ought to be in his Father's Power.

VI. *Manhood.* L. N. N. l. 6. c. 2. § 11.

PATRI-

VII. *Patriarchs Power abridged.* L. N. N. l. 6. c. 2. § 6.

PATRIARCHS, or *Heads* of independent Families, before they join'd in Communities, acted in many Cases after the manner of *Princes*, in their Houses. So that their Progeny, who continued a Part of their Families, paid the highest Veneration to their Authority. But afterward, this Family-Royalty (as well as some other private Rights) was moderated for the Benefit and Order of Communities; and in some Places more, in others less of Power was left to Parents. Hence we see that, in some Governments, Fathers have in Criminal Cases a Power of Life and Death over their Children; but in most it is not allowed, either for fear Parents should abuse this Prerogative to the Detriment of the Publick, or to the unjust Oppression of those so subjected; or, lest thro' the Tenderness of Paternal Affection, many Vices should pass unpunished, which might break forth one time or other into publick Mischiefs; or else, that Fathers might not be under a Necessity of pronouncing sad and ungrateful Sentences.

VIII. *Marriage with Parents Consent.* L. N. N. l. 6. c. 2. § 14.

AND as the Father ought not to *turn his Child out of his Family*, while he stands in Need of Education and Assistance from him, without the most weighty Reasons; so also ought not the Son or Daughter leave the Parent's House without his Consent. Now whereas Children frequently leave their Father's Family on Occasion of Matrimony; and since it much concerns Parents what Persons their Children are married to, and from whom they are to expect Grand-Children; hence it is a Part of filial Duty, herein to *comply with the Will of the Parents*, and not to marry without their Consent. But if

if any do actually contract Matrimony againſt their Liking, and conſummate the ſame, ſuch Marriage ſeems not to be void by the Law of Nature, eſpecially if they intend to be no longer burthenſome to their Parents, and that for the reſt their Condition be not ſcandalous. So that if in any Country ſuch Marriages are accounted null and void, it proceeds from the Municipal Laws of the Place.

IX. *Piety ever due to Parents.* L. N. N. l. 6. c. 2. § 12.

BUT when a *Son* or *Daughter have left their Father's Houſe*, and either have ſet up a new Family of their own, or joined to another; the Paternal *Authority* indeed ceaſes, but Piety and Obſervance is for ever due, as being founded in the Merits of the Parents, whom Children can never or very ſeldom be ſuppoſed to requite. Now theſe Merits do not conſiſt in this only, That a Parent is to his Child the Author of Life, without which no Good can be injoyed; but that they beſtow alſo a chargeable and painful Education upon them, that ſo they may become uſeful Parts of Human Society; and very often lay up ſomewhat for them, in order to make their Lives more eaſie and comfortable.

X. *Education intruſted.* L. N. N. l. 6. c. 2. § 6.

AND yet, though the Education of Children be a Duty laid upon Parents by Nature it ſelf, it hinders not but that, either in Caſe of Neceſſity, or for the Benefit of the Children, the Care thereof may by them be *intruſted with another*; ſo ſtill that the Parent reſerve to himſelf the Overſight of the Perſon deputed. Hence it is, that a Father may not only commit his Son to the *Tutorage* of proper Teachers; but he may give him to another Man to *adopt* him, if he perceives it will be advantagious to him.

him. And if he have no other Way to maintain him, rather than he ſhould die for Want, he may *hire* him out for Wages, or *ſell* him into ſome tolerable Servitude, reſerving ſtill a Liberty of redeeming him, as ſoon as either himſelf ſhall be able to be at the Charge, or any of his Kindred ſhall be willing to do it. But if any Parent ſhall inhumanly expoſe and forſake their Child, he who ſhall take it up and educate it, ſhall have the *Fatherly Authority* over it; ſo that the Foſter Child ſhall be bound to pay filial Obedience to his *Educator*.

XI. *Duty of Parents.* THE Duty of *Parents* conſiſts chiefly in this, That they maintain their Children handſomly, and that they ſo form their Bodies and Minds by a ſkilful and wiſe Education, as that they may become fit and uſeful Members of Human and Civil Society, Men of Probity, Wiſdom, and good Temper. So that they may apply themſelves to ſome fit and honeſt Way of Living, by which they may, as their Genius and Opportunity ſhall offer, raiſe and increaſe their Fortunes.

XII. *Duty of Children.* ON the other Hand, 'tis the Duty of *Children* to honour their Parents, that is, to give them Reverence, not only in outward Shew, but much more with a hearty Reſpect, as the Authors not only of their Lives, but of many other invaluable Benefits to 'em; to obey 'em; to be aſſiſtant to 'em to their utmoſt, eſpecially if they are Aged, or in Want; not to undertake any Buſineſs of Moment, without paying a Deference to their Advice and Opinion; and, laſtly, To bear with Patience their Moroſeneſs, and any other their Infirmities, if any ſuch be.

CHAP.

CHAP. IV.

The Duties *of* Maſters *and* Servants.

AFTER Mankind came to be multiplied and it was found how conveniently Domeſtic Affairs might be managed by the Service of other Men, * it early became a Practice to *take Servants into a Family*, to do the Offices belonging to the Houſe. Theſe at firſt probably offer'd themſelves, driven thereto by Neceſſity, or a Conſciouſneſs of their own Want of Underſtanding; but upon being aſſur'd that they ſhould conſtantly be ſupplied with Food and Neceſſaries, they devoted all their Services for ever to ſome Maſter: And then Wars raging up and down the World, † it grew a Cuſtom with moſt Nations, that thoſe *Captives*, to whom they granted their Lives, ſhould be made Slaves ever after, together with the Poſterity born of them; though in many Countries, no ſuch Servitude is in Uſe; but all Domeſtic Offices are perform'd by mercenary Servants hired for a certain Time. I. *Servile State how begun.* L. N. N. l. 6. c. 3.

NOW as there are ſeveral *Degrees*, as it were, of *Servitude*, ſo the Power of the Maſters, and II. *A Tempo*

* *Grotius de Jure Belli & Pacis.* lib. 2. cap. 5. § 27, &c.

† *Grotius de Jure Belli & Pacis*, lib. 3. cap. 14. § 1, &c.

rary Servant. L N. N. l. 6. c. 3. § 4.

the Condition of the Servants do vary. To a *Servant hired* for a Time, the Duty of the Maſter is to pay him his *Wages*; the other making good on his Part the *Work* as agreed for: And becauſe in this Contract the Condition of the Maſter is the better, therefore ſuch Servant is alſo to pay Reſpect to his Maſter according to his Dignity; and if he have done his Buſineſs knaviſhly or negligently, he is liable to Puniſhment from him; provided it go not ſo far as any grievous Maiming of his Body, much leſs ſo far as Infliction of Death.

III. *A Voluntary Perpetual Servant.*

But to ſuch a Servant as *voluntarily offers himſelf to perpetual Servitude*, the Maſter is obliged to allow perpetual Maintenance, and all Neceſſaries for this Life; it being his Duty on the other hand to give his conſtant Labour in all Services whereto his Maſter ſhall command him, and whatſoever he ſhall gain thereby, he is to deliver to him. In thus doing, however, the Maſter is to have a Regard to the Strength and Dexterity of his Servant, not exacting rigorouſly of him what is above his Power to do. Now this Sort of Servant is not only ſubject to the Chaſtiſement of his Maſter for his Negligence, but the ſame may correct his Manners, which ought to be accommodated to preſerve Order and Decency in the Family: But he may not ſell him againſt his Will; becauſe he *choſe this* for his Maſter of his own Accord, and not another; and it concerns him much with whom he ſerves. If he have been guilty of any heinous Crime againſt one not of the ſame Family, he is ſubject to the Civil Power, if he live in a Community; but if the Family be independent, he may be expell'd. But if the Crime be againſt

gainſt the ſame Family, it being independent, the Head thereof may inflict even Capital Puniſhment.

CAPTIVES *in War* being made *Slaves*, are frequently treated with greater Severity, ſomething of a hoſtile Rage remaining towards 'em, and for that they attempted the worſt upon us and our Fortunes. But as ſoon as there intervenes a *mutual Truſt*, in order to Cohabitation in the Family, between the Victor and the vanquiſh'd Perſon, all paſt Hoſtility is to be accounted as forgiven: And then the Maſter does Wrong even to a Servant thus acquir'd, if he allow him not Neceſſaries for Life, or exerciſe Cruelty to him without Cauſe, and much more if he take away his Life, when he has commited no Fault to deſerve it. IV. *Captive Slaves* L. N. N. l. 6. c. 3. § 7

IT is alſo the Practice to paſs away our Property in ſuch *Slaves* who are taken in War, or bought with our Money, to whom we pleaſe, after the ſame manner as we do our other Goods and Commodities; ſo that the *Body of ſuch Servant* is holden to be a Chattel of his Maſter. And yet here *Humanity* bids us not to forget that this Servant is a MAN, however, and therefore ought not to be treated as we do our Moveables, uſe 'em or abuſe 'em, or deſtroy 'em as we liſt. And when we are minded to part with him, we ought not to deliver him into the Hands of ſuch, as we know will abuſe him inhumanly and undeſervedly. V. *Alienable*

LASTLY, 'Tis every where allow'd, That the *Progeny* of Parents who are Bondmen, are alſo in a *ſervile State*, and belong as Slaves to the Owner of their Mother. Which is juſtified by this Maxim, That whoſoever is Propri- VI. *Offspring of Slaves.* L. N. N. l. 6 c. 3. § 9.

etor of the Body, is alſo Proprietor of whatſoever is the Product thereof; and becauſe ſuch Iſſue had never been born, if the Maſter had executed the Rigor of War upon the Parent; and for that the Parent having nothing ſhe can call her own, the Offspring cannot otherwiſe be brought up but at her Maſter's Charge. Whereas, therefore, the Maſter afforded ſuch Infant Nouriſhment, long before his Service could be of any Uſe to him; and whereas all the following Services of his Life could not much exceed the Value of his Maintenance, he is not to leave his Maſter's Service without his Conſent. But 'tis manifeſt, That ſince theſe Bondmen came into a State of Servitude not by any Fault of their own, there can be no Pretence that they ſhould be otherwiſe dealt withal, than as if they were in the Condition of perpetual hired Servants.

CHAP. V.

The Impulſive Cauſe *of Conſtituting* Communities.

I. *This Inquiry neceſſary.* L. N. N. l. 7. c. 1.

ALTHO' there be hardly any Delight or Advantage, but what may be obtain'd from thoſe Duties, of which we have already diſcours'd; it remains, nevertheleſs, that we inquire into the Reaſons, why Men, not contenting themſelves with thoſe primitive and ſmall Societies, have founded ſuch as are more ample, call'd COMMUNITIES. For from theſe Grounds

Grounds and Foundations is to be deduced the Reaſon of thoſe Duties, which merely relate to the Civil State of Mankind.

II. *Difficulty herein.* L. N. N. l. 7. c. 1. § 2.

HERE, therefore, it ſuffices not to ſay, That Man is *by Nature inclin'd to Civil Society*, ſo as he neither can nor will live without it. For ſince, indeed, it is evident, that Man is ſuch a Kind of Creature, as has a moſt tender Affection for himſelf and his own Good; it is manifeſt, that when he ſo earneſtly ſeeks after Civil Society, he reſpects ſome particular Advantage that will accrue to him thence. And altho' without Society with his Fellow-Creatures, Man would be the moſt miſerable of all Creatures; yet ſince the natural Deſires and Neceſſities of Mankind might be abundantly ſatisfied by thoſe primitive Kind of Societies, and by thoſe Duties to which we are obliged, either by Humanity or Contracts; it cannot immediately be concluded from this natural Society between Man and Man, that his Nature and Temper does directly incline him to the forming of Civil Communities.

III. *Twofold Inquiry.* L. N. N. l. 7. c. 1. § 4.

WHICH will more evidently appear, if we conſider, What Condition Mankind is placed in by the Conſtitution of *Civil Communities*: What that Condition is, which Men enter into when they make themſelves Members of a Civil State: What Qualities they are which properly intitle them to the Name of *Political Creatures*, and render them good Patriots or Subjects to the State. And, laſtly, What there is in their Frame and Conſtitution, which ſeems, as we may ſay, to indiſpoſe them for living in a *Civil Community*.

IV. *Natural State.* WHOSOEVER becomes a *Subject*, immediately loſes his Natural Liberty, and ſubmits himſelf to ſome Authority, which is veſted with the Power of Life and Death; and by the Commands of which, many Things muſt be done, which otherwiſe he would have been no ways willing to do, and many Things muſt be let alone, to which he had a ſtrong Inclination: Beſides, moſt of his Actions muſt terminate in the Publick Good, which in many Caſes ſeems to claſh with Private Men's Advantage. But Man by his *Natural* Inclinations is carried to this, To be ſubject to no one, to do all Things as he liſts, and in every thing to conſult his *ſingle* Advantage.

V. *The Qualities of a good Member of the Community.* BUT we call him a (*Political Animal* or) *True Patriot*, and Good Subject, who readily obeys the Commands of his Governours; who endeavours with his utmoſt to promote the Publick Good, and next to that, regards his Private Affairs; nay, more, who eſteems nothing profitable to himſelf, unleſs the ſame be likewiſe profitable to the Community; laſtly, who carries himſelf fairly towards his Fellow-Subjects. But there are few Men to be found, whoſe Tempers are naturally thus well inclin'd. The greater Part being reſtrain'd merely for fear of Puniſhment; and many continue all their Lifetime ill Subjects and unſociable Creatures.

VI. *How Men naturally diſturb and hinder the Benefits of Society.* FARTHERMORE, there is no Creature whatſoever more fierce or untameable than Man, or which is prone to more Vices that are apt to diſturb the Peace and Security of the Publick. For beſides his inordinate Appetite to Eating, Drinking, and Venery, to which Brute Beaſts are likewiſe ſubject, Mankind is inclin'd to many

many Vices, to which Brutes are altogether Strangers; as is the unſatiable Deſire and Thirſt after thoſe Things which are altogether ſuperfluous and unneceſſary, and above all to that worſt of Evils, AMBITION; alſo a too laſting Reſentment and Memory of Injuries, and a Deſire of Revenge increaſing more and more by Length of Time; beſides an infinite Diverſity of Inclinations and Affections, and a certain Stiffneſs and Obſtinacy in every one to indulge his own particular Humour and Fancy. Moreover, Man takes ſo great Delight in exerciſing his Cruelty over his Fellow Creatures, that the greateſt Part of the Evils and Miſchiefs, to which Mankind is obnoxious, is wholly owing to the mercileſs Rage and Violence of Men to each other. L. N. N. l. 1. c. 3. § 4.

VII. *Reaſon of Change.*

THEREFORE the genuine and principal Reaſon which induced Maſters of Families to quit their own natural Liberty, and to form themſelves into Communities, was, That they might provide for themſelves a Security and Defence againſt the Evils and Miſchiefs that are incident to Men from one another. For as, next under God, one Man is moſt capable of being helpful to another; ſo nothing is able to create Man more Diſtreſs, and work him more Miſchief, than Man himſelf; and thoſe Perſons have entertain'd a right Conception of the Malice of Men, and the Remedy thereof, who have admitted this as a common Maxim and Proverb; That *unleſs there were Courts of Judicature, one Man would devour another.* But after that, by the Conſtituting of Communities, Men were reduced into ſuch an Order and Method, that they might be ſafe and ſecure from mutual Wrongs and Injuries among themſelves, L. N. N. l. 7. c. 1. § 7.

it was by that means provided, that thereby they might the better enjoy thoſe Advantages, which are to be reap'd and expected from one another; to wit, That they might from their Childhood be brought up and inſtructed in good Manners, and that they might invent and improve ſeveral Kinds of Arts and Sciences, whereby the Life of Man might be better provided and furniſhed with neceſſary Conveniences.

VIII. *Farther Penalties.* L. N. N. l. 7. c. 1. § 8.

And the Reaſon will be yet more cogent for the Conſtituting of Communities, if we conſider, that other Means would not have been capable of curbing the Malice of Men. For although we are enjoyn'd by the Law of Nature not to do any Injury one to another; yet the Reſpect and Reverence to that Law is not of that Prevalence as to be a ſufficient Security for Men to live altogether quietly and undiſturbed in their Natural Liberty.

For although by Accident, there may be found ſome few Men of that moderate quiet Temper and Diſpoſition, that they would do no Injury to others, tho' they might eſcape unpuniſh'd; and there may be likewiſe ſome others, that in ſome meaſure bridle in their diſorderly *Affections* thro' fear of ſome Miſchief that may enſue from thence; yet, on the contrary, there are a great Number of ſuch, as have no Regard at all to Law or Juſtice, whenever they have any Proſpect of Advantage, or any Hopes, by their own ſubtle Tricks and Contrivances, of being too hard for, and deluding the injur'd Party. And as it behoves every one, that would take care of his own Safety, to endeavour to ſecure himſelf againſt this Sort of Perſons; ſo no better Care and

and Proviſion can be made, than by means of theſe Communities and Civil Societies. For altho' ſome particular Perſons may mutually agree together to aſſiſt each other; yet unleſs there be ſome Way found out, whereby their Opinions and Judgments may be united together, and their Wills may be more firmly bound to the Performance of what they have agreed upon, it will be in vain for any one to expect and rely upon any certain Succour and Aſſiſtance from them.

IX. *Advantage of Penalties.* L. N. N. l. 7. c. 1. § 11.

Lastly, Altho' the Law of Nature does ſufficiently inſinuate unto Men, that they who do any Violence or Injury to other Men, ſhall not eſcape unpuniſhed; yet neither the Fear and Dread of a Divine Being, nor the Stings of Conſcience are found to be of ſufficient Efficacy to reſtrain the Malice and Violence of all Men. For very many Perſons, thro' the Prejudice of Cuſtom and Education, are, as it were, altogether deaf to the Force and Power of Reaſon. Whence it comes to paſs, that they are only intent upon ſuch Things as are preſent, taking very little Notice of thoſe Things which are future; and that they are affected only with thoſe Things which make a preſent Impreſſion upon their Senſes. But ſince the Divine Vengeance is wont to proceed on but ſlowly; from whence many ill Men have taken Occaſion to refer their Evils and Misfortunes to other Cauſes; eſpecially ſince they very often ſee wicked Men injoy a Plenty and Abundance of thoſe Things wherein the vulgar Sort eſteem their Happineſs and Felicity to conſiſt. Beſides, the Checks of Conſcience, which preceed any wicked Action, ſeem not to be of that

that Force and Efficacy, as that Puniſhment which follows the Commiſſion of the Fact, when, that which is done, cannot poſſibly be undone. And therefore the moſt preſent and effectual Remedy, for the quelling and ſuppreſſing the evil Deſires and Inclinations of Men, is to be provided by the Conſtituting of Civil Societies.

CHAP. VI.

Of the Internal Frame and Conſtitution of any State *or* Government.

I. *Conjunction neceſſary.*

THE next Enquiry we are to make, is upon what Bottom Civil Societies have been erected, and wherein their *Internal Conſtitution* does conſiſt. Where, in the firſt Place, this is manifeſt, That neither any Place, nor any Sort of Weapons, nor any Kind of brute Creatures can be capable of affording any ſufficient and ſafe Guard or Defence againſt the Injuries to which all Men are liable, by reaſon of the Pravity of Mankind: From ſuch Dangers, Men alone can afford an agreeable Remedy by joining their Forces together, by interweaving their Intereſts and Safety, and by forming a general Confederacy for their mutual Succour; that therefore this End might be obtain'd effectually, it was neceſſary that thoſe who ſought to bring it about, ſhould be firmly joined together and *aſſociated* into *Communities*.

L. N. N. l. 7. c. 2.

NOR

NOR is it leſs evident, that the Conſent and Agreement of *Two* or *Three* particular Perſons cannot afford this Security againſt the Violence of other Men: Becauſe it may eaſily happen, that ſuch a Number may conſpire the Ruin of thoſe *few Perſons*, as may be able to aſſure themſelves of a certain Victory over them; and 'tis very likely they would with the greater Boldneſs go about ſuch an Enterpriſe, becauſe of their certain Hopes of Succeſs and Impunity. To this end therefore it is neceſſary, that a very conſiderable *Number* of Men ſhould unite together, that ſo the Overplus of a few Men to the Enemies, may not be of any great Moment to determine the Victory to their Side. II. *Numbers Neceſſary.* L. N. N. l. 7. c. 2. § 2.

AMONG thoſe many, which join together in order to this End, it is abſolutely requiſite that there be a *perfect Conſent and Agreement concerning the Uſe of ſuch Means as are moſt conducive to the End aforeſaid.* For even a great Multitude of Men, if they do not *agree* among themſelves, but are divided and ſeparated in their Opinions, will be capable of effecting but very little; Or, although they may agree for a certain Time, by reaſon of ſome preſent Motion or Diſpoſition of the Mind; yet as the Tempers and Inclinations of Men are very variable, they preſently afterwards may divide into Parties. And although by Compact they engaged among themſelves, that they would employ all their Force for the common Defence and Security; yet neither by this Means is there ſufficient Proviſion made, that this Agreement of the Multitude ſhall be permanent and laſting: But ſomething more than all this, is requiſite, to wit, That they who have once entered III. *Agreement to be perpetual.* L. N. N. l. 7. c. 2. § 3.

entered into a mutual League and Defence for the Sake of the Publick Good, ſhould be debarr'd from ſeparating themſelves afterwards, when their private Advantage may ſeem any ways to claſh with the Publick Good.

IV. *Faults herein how remedied.* L. N. N. l. 7. c. 2. § 5.

But there are two Faults, which are chiefly incident to Human Nature, and which are the Occaſion that many who are at their own Liberty, and independent one upon the other, cannot long hold together for the promoting of any Publick Deſign. The One is the *Contrariety* of Inclinations and Judgments in determining what is moſt conducive to ſuch an End; to which in many there is join'd a *Dulneſs* of Apprehending which, of ſeveral Means propos'd, is more advantagious than the reſt; and a certain *Obſtinacy* in defending whatſoever Opinion we have embraced. The other is a certain *Careleſneſs* and *Abhorrence* of doing that freely, which ſeems to be convenient and requiſite, whenſoever there is no abſolute Neceſſity, that compels them, whether they will or no, to the Performance of their Duty. The Firſt of theſe Defects may be prevented by a laſting Uniting of all their Wills and Affections together. And the Latter may be remedied by the conſtituting of ſuch a Power as may be able to inflict a preſent and ſenſible Penalty upon ſuch as ſhall decline their Contributing to the Publick Safety.

V. *Union of Wills.*

The Wills and Affections of a great Number of Men cannot be united by any better means, than when every one is willing to ſubmit his Will to the Will of one particular *Man*, or one Aſſembly of Men; ſo that afterwards whatſoever he or they ſhall will or determine concerning

concerning any Matters or Things neceſſary for the Publick Safety, ſhall be eſteemed as the Will of *All* and every particular Perſon.

VI. *And of Forces.*

Now ſuch a Kind of Power, as may be formidable to All, can by no better means be conſtituted among a great Number of Men, than when All and every one ſhall oblige themſelves, to make Uſe of their Strength after that Manner, as he ſhall command, to whom All Perſons muſt ſubmit and reſign the Ordering and Direction of their united Forces: And when there is an Union made of their Wills and Forces, then this Multitude of Men may be ſaid to be animated and incorporated into a firm and laſting Society.

VII. *Other Requiſites. Two Covenants. The Firſt.* L. N. N. l. 7. c. 2. § 6.

Moreover, that any Society may grow together after a regular Manner, there are required Two *Covenants*, and One Decree, or *Conſtitution*. For, firſt, Of all thoſe many, who are ſuppoſed to be in a Natural Liberty, when they are joined together for the forming and conſtituting any Civil Society, every Perſon enters into Covenant with each other, That they are willing to come into one and the ſame laſting Alliance and Fellowſhip, and to carry on the Methods of their Safety and Security by a common Conſultation and Management among themſelves: In a Word, That they are willing to be made Fellow Members of the ſame Society. To which Covenant, it is requiſite, that All and ſingular Perſons do conſent and agree, and he that does not give his Conſent, remains excluded from ſuch Society.

VIII. *Conſtitution.*

After this *Covenant*, it is neceſſary, that there ſhould be a *Conſtitution* agreed on by a publick Decree, ſetting forth, what *Form* of

Government

Government is to be pitched upon. For 'till this be determined, nothing with any Certainty can be tranſacted, which may conduce to the publick Safety.

IX. *The other Covenant.* L. N. N. l. 7. c. 2. § 8.

AFTER this Decree concerning the *Form* of *Government*, there is Occaſion for another *Covenant*, when he or they are nominated and conſtituted upon whom the Government of this Riſing Society is conferr'd; by which Covenant the Perſons that are to govern, do oblige themſelves to take Care of the Common Safety, and the other Members do in like manner oblige themſelves to yield Obedience to them; whereby alſo all Perſons do ſubmit their Will to the Will and Pleaſure of him or them, and they do at the ſame Time convey and make over to him or them the Power of making Uſe of, and applying their united Strength, as ſhall ſeem moſt convenient for the Publick Security. And when this Covenant is duly and rightly executed, thence, at laſt, ariſes a *complete* and *regular Government.*

X. *A Community defined.* L. N. N. l. 7. c. 2. § 13.

A CIVIL Society and Government, thus conſtituted, is look'd upon as if it were but *One Perſon*, and is known and diſtinguiſhed from every particular Man by one *Common Name*; and it has peculiar Rights and Privileges, which neither each One alone, nor Many, nor All together can claim to themſelves, without him, who is the Supreme, or to whom the Adminiſtration of the Government is committed. Whence a Civil Society is defined to be, One Perſon morally incorporated, whoſe Will containing the Covenants of many united together, is looked upon and eſteemed as the Will of All; ſo that he is in a Capacity of making

Uſe

Uſe of the Strength and Power of every particular Perſon for the Common Peace and Security.

XI. *How ſubjected to One.* L. N. N. l. 7. c. 2. § 14.

Now the Will and Intention of any Conſtituted Government or Society exerts it ſelf, as the Principle of Publick Actions, either by one particular Perſon, or by one Council or Aſſembly, according as the Power of Managing Affairs is conferr'd on him, or on ſuch an Aſſembly. Where the Government of the State is in the Power of One Man, the ſaid Society is ſuppoſed to will, whatſoever ſhall be the Will and Pleaſure of that Man, allowing that he is in his perfect Senſes; and it being about thoſe Affairs which only relate to Government.

XII. *How to many.* L. N. N. l. 7. c. 2. § 15.

But when the Government of a State is conferr'd upon a *Council*, conſiſting of ſeveral Men, every one of them retaining his own Natural Free-Will, that regularly is eſteemed to be the Will and Pleaſure of the State, whereto the *Major Part* of the Perſons, of whom the Council is compoſed, does give their Aſſent; unleſs it be expreſsly declared, how great a Part of the Council conſenting is required to repreſent the Will of the Whole. But where two differing Opinions are equally balanced on both ſides, there is nothing at all to be concluded upon, but the Affair ſtill remains in its former State. When there are ſeveral differing Opinions, that ſhall prevail which has more Voices than any of the other differing Opinions, provided ſo many concur therein, as otherwiſe might have repreſented the Will and Pleaſure of the Whole, according to the Publick Conſtitutions.

A State

XIII. *Various Forms of Government.* L. N. N. l. 7. c. 2. § 20.

A STATE or Government being thus conſtituted, the Party on whom the Supreme Power is conferr'd, either as it is a ſingle Perſon, or a Council conſiſting of ſelect Perſons, or of All in General, is called a MONARCHY, an ARISTOCRACY, or a FREE STATE; the reſt are looked upon as *Subjects* or *Citizens*, the Word being taken in the moſt comprehenſive Senſe: Although, in Strictneſs of Speech, ſome call only thoſe *Citizens*, who firſt met and agreed together in the forming of the ſaid Society, or elſe ſuch who ſucceeded in their Place, to wit, *Houſe-holders* or *Maſters of Families*.

MOREOVER, Citizens are either *Originally* ſo; that is, ſuch as are born in the Place, and upon that Account claim their Privileges: Or elſe *Adſcititious*; that is, ſuch as come from Foreign Parts.

OF the firſt Sort, are either thoſe who at firſt were preſent and concerned in the forming the ſaid Society, or their Deſcendants, whom we call *Indigenæ*, or Natives.

OF the other Sort are thoſe who come from Foreign Parts in order to ſettle themſelves there. As for thoſe who come thither only to make a ſhort Stay, although they are for that Time ſubject to the Laws of the Place; nevertheleſs, they are not looked upon as Citizens, but are called *Strangers* or Sojourners.

XIV. *Government from GOD.* L. N. N. l. 7. c. 3.

NOT that what we have delivered concerning the Original of Civil Societies, does any ways hinder, but that CIVIL GOVERNMENT may be truly ſaid to be from GOD. For it being his Will, that the Practices of Men ſhould be ordered according to the *Law of Nature*; and yet upon the Multiplication of Mankind,

kind, Human Life would have become ſo horrid and confuſed, that hardly any Room would have been left for the ſame to exert its Authority; and ſeeing the Exerciſe thereof would be much improved by the Inſtitution of Civil Societies; therefore (ſince He who commands the End, muſt be ſuppoſed to command likewiſe the Means neceſſary to the ſaid End) GOD alſo, by the Mediation of the Dictates of Reaſon, is to be underſtood antecedently to have willed, That Mankind, when they were multiplyed, ſhould erect and conſtitute Civil Societies, which are, as it were, animated with a Supreme Authority. The Degrees whereof He expreſsly approves in Divine Writ, ratifying their Divine Inſtitution by a peculiar Law, and declaring, That Himſelf takes them into his eſpecial Care and Protection.

CHAP. VII.

Of the ſeveral Parts of Government.

I. WHAT are the Conſtituent *Parts* of Supreme Power, and by what *Methods* it exerts its Force in Civil Societies, may eaſily be gather'd from the Nature and End of the ſaid Societies. L. N. N. l. 7. c. 4.

II. *Will of the Supreme to be made known.* IN a Civil Society all Perſons are ſuppoſed to have ſubmitted their Will to the Will and Pleaſure of the Governours, in ſuch Affairs as concern the Safety of the Publick, being willing to do whatſoever they require. That this

L. N. N. l. 7. c. 4. § 2. may be effected, it is neceſſary, that the Governors do *ſignify* to thoſe who are to be governed, what their Will and Pleaſure is concerning ſuch Matters. And this they do, not only by their *Commands*, directed to particular Perſons about particular Affairs; but alſo by certain general *Rules*, whence all Perſons may, at all Times, have a clear and diſtinct Knowlege of what they are to do or omit. By which likewiſe it is commonly defined and determined what ought to be looked upon to be each Man's Right and Property, and what does properly belong to another; * what is to be eſteemed Lawful, and what Unlawful in any Publick Society; what Commendable, or what Baſe; what every Man may do by his own Natural Liberty, or how every one may diſpoſe and order his own particular Rights towards the Advancement of the common Peace and Tranquillity: In fine, what, and after what manner, every one by Right may lay Claim to from another. For it conduces very much to the Peace and Proſperity of any Civil Society, that all theſe Things ſhould be clearly and plainly laid down and determined.

III. *Penalty.* L. N. N. l. 7. c. 4. § 3. MOREOVER, this is the Chief *End* of Civil Societies, That Men, by a mutual Agreement and Aſſiſtance of one another, might be ſecured againſt the Injuries and Affronts, which may, and very often do, befall us by the Violence of other Men. Now that this End may

* That is to ſay, In ſuch Matters as are neither commanded nor forbidden by any Divine Law, whether it be Natural or Revealed. See *Law of Nature and Nations.* Book VIII. Chap. I. § 2, &c.

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the better be obtained by thoſe Men, with whom we are link'd together in the ſame Society; it is not ſufficient, that they ſhould mutually agree among themſelves not to injure one another: Nor is it enough, that the bare Will and Pleaſure of the Supreme Magiſtrate ſhould be made known to them; but 'tis likewiſe requiſite, that there ſhould be a certain Fear and Dread of *Puniſhment*, and a Power and Ability of inflicting the ſame. Which *Puniſhment* or *Penalty*, that it may be ſufficient for this End, is to be ſo ordered, that there may plainly appear a greater Damage in violating the Laws, than in obſerving them; and that ſo the *Sharpneſs* and *Severity* of the Penalty, may outweigh the *Pleaſure* and *Advantage* gotten, or expected by doing the Injury: Becauſe it is impoſſible but that of two Evils Men ſhould chuſe the leaſt. For although there are many Men who are not reſtrained from doing Injuries by any Proſpect of Puniſhment hanging over their Heads; yet that is to be looked upon as a Caſe that rarely happens, and ſuch as, conſidering the preſent Condition and Frailty of Mankind, cannot be wholly avoided.

IV. *Controverſies.* L. N. N. l. 7. c. 4. § 4.

BECAUSE alſo it very often happens, that many Controverſies do ariſe about the *right Application* of the Laws to ſome particular Matters of Fact, and that many Things are to be nicely and carefully conſidered in order to determine whether ſuch a Fact may be ſaid to be againſt Law; therefore, in order to the Eſtabliſhment of Peace and Quietneſs amongſt the Subjects, it is the Part of the ſupreme Governour to take Cognizance of, and determine the *Controverſies* ariſing between Subject and Subject,

and carefully to examine the Actions of particular Perſons, which are found to be contrary to Law, and to pronounce and execute ſuch Sentence as ſhall be agreeable to the ſame Law.

V. *Power of Peace and War.* L. N. N. l. 7. c. 4. § 5.

BUT that thoſe, who by mutual Agreement have conſtituted a Civil Society, may be ſafe againſt the Inſults of Strangers, the ſupreme Magiſtrate has Power to *aſſemble*, to *unite* into a Body, and to *arm*, or, inſtead of that, to liſt as many Mercenaries as may ſeem neceſſary, conſidering the uncertain Number and Strength of the Enemy, for the maintaining the publick Security; and it is likewiſe intirely left to the Diſcretion of the ſame Magiſtrate, to make Peace whenever he ſhall think convenient.

AND ſince, both in Times of Peace and War, *Alliances* and *Leagues* with other Princes and States are of very great Uſe and Importance, that ſo the different Advantages of divers States and Governments may the better be communicated to each other, and the Enemy, by their joint Forces, may be repulſed with the greater Vigour, or be more eaſily brought to Terms. It is alſo abſolutely in the Power of the ſupreme Magiſtrate to enter into ſuch *Leagues* and *Treaties* as he ſhall think convenient to each Occaſion; and to oblige all his Subjects to the Obſervation of them, and at once to derive and convey down to the whole Civil Society, all the Benefits and Advantages thence ariſing.

VI. *Publick Officers.* L. N. N. l. 7. c. 4. § 6.

SEEING alſo the Affairs of any conſiderable State, as well in Time of War as Peace, cannot well be managed by one Perſon, without the Aſſiſtance of ſubordinate *Miniſters* and *Magiſtrates*,

giſtrates, it is requiſite that able Men ſhould be appointed by the ſupreme Magiſtrate, to decide and determine in his Room the Controverſies ariſing between Subject and Subject; to inquire into the Councils of the Neighbouring Princes and States; to govern the Soldiery; to collect and diſtribute the publick Revenue: and, laſtly, in every Place to take ſpecial Care of the Common Good. And from each of theſe Perſons the ſupreme Magiſtrate may, and ought to exact the Performance of their Duty, and require an Account of their Behaviour in their reſpective Stations.

VII. *Taxes*, L. N. N. l. 7. c. 4. § 7.

And becauſe the Concerns of any Civil Society can, neither in Time of War nor Peace, be managed without *Expences*, the ſupreme Authority has Power to compel the Subjects to provide the ſame. Which is done ſeveral Ways; either when the Community appropriates a certain Portion of the Revenues of the Country they poſſeſs, for this Purpoſe; or when each Subject contributes ſomething out of his own Eſtate, and, if Occaſion requires, gives alſo his perſonal Help and Aſſiſtance; or when Cuſtoms are ſet upon Commodities imported and exported, (of which the firſt chiefly affects the Subjects, and the other Foreigners;) or, laſtly, when ſome moderate Tax is laid on thoſe Commodities which are ſpent.

VIII. *Publick Doctrines.* L. N. N. l. 7. c. 4. § 8.

To conclude: Since the Actions of each Perſon are governed by his own particular Opinion, and that moſt People are apt to paſs ſuch a Judgment upon Things as they have been accuſtomed unto, and as they commonly ſee other People judge; ſo that very few are capable of diſcerning what is juſt and honeſt; upon this

Account therefore it is expedient for any Civil Society, that ſuch Kind of Doctrines ſhould be publickly taught, as are agreeable to the right End and Deſign of ſuch Societies, and that the Minds of the Inhabitants ſhould be ſeaſoned betimes with theſe Principles. * It does therefore belong to the ſupreme Magiſtrate to conſtitute and appoint fitting Perſons to inform and inſtruct them publickly in ſuch Doctrines.

IX. *All theſe Parts concentered.*

Now theſe ſeveral Parts of Government are naturally ſo connected, that to have a regular Form ſuitable to any civil Society, all theſe Parts thereof ought radically to center in One. For if any Part be wanting, the Government is defective, and uncapable of procuring its End. But if theſe ſeveral Parts be divided, ſo that ſome of them be radically here, and others there, hence of Neceſſity will follow an irregular and incoherent State of Things.

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* *Apolog.* § 6. *Eris Scandica.* P. 7, &c. *See alſo the* References *at* Lib. I. c. 4. § 9.

CHAP.

CHAP. VIII.

Of the ſeveral Forms *of* Government.

THE Supreme Power conſider'd either as it reſides in a Single *Man*, or in a Select *Council* or *Aſſembly* of Men, or of *All* in General, produces diverſe Forms of Government. I. *Diverſe Forms.* L. N. N. l. 7. c. 5.

NOW the Forms of Government are either *Regular* or *Irregular*. Of the firſt Sort are thoſe where the ſupreme Power is ſo united in one particular Subject, that the ſame being firm and intire, it carries on, by one *ſupreme Will*, the whole Buſineſs of Government. Where this is not found, the Form of Government muſt of Neceſſity be *Irregular*. II. *Regular and Irregular.*

THERE are Three *Regular* Forms of Government: The Firſt is, When the ſupreme Authority is in *One Man*; and that is call'd a MONARCHY. The Second, When the ſame is lodged in a *ſelect Number* of Men; and that is an ARISTOCRACY. The Third, When it is in a Council or Aſſembly of *Free-holders* and *Principal Citizens*; and that is a DEMOCRACY. In the Firſt, he who bears the ſupreme Rule, is ſtil'd, A MONARCH; in the Second, the NOBLES; and in the Third, The PEOPLE. III. *Three Regular Forms.* L. N. N. l. 7. c. 5. § 2.

IN all theſe Forms, the Power is indeed the ſame. But in one Reſpect MONARCHY has a conſiderable Advantage above the reſt; becauſe in order to deliberate and determine, that is, actually to exerciſe the Government, there is IV. *Forms compar'd.* L. N. N. l. 7. c. 5. § 9.

no Neceſſity of appointing and fixing certain Times and Places; for he may deliberate and determine in any Place, and at any Time; ſo that a *Monarch* is always in a Readineſs to perform the neceſſary Actions of Government. But that the *Nobles* and the *People*, who are not as one natural Perſon, may be able ſo to do, it is neceſſary that they meet at certain Times and Places, there to debate and reſolve upon all publick Buſineſs. For the Will and Pleaſure of a Council, or of the People, which reſults from the Majority of Votes concentring, can no otherwiſe be diſcover'd.

V. *A diſtemper'd State* L. N. N. l 7. c. 5. § 10.

But, as it happens in other Matters, ſo in Governments alſo it falls out, That the ſame may be ſometimes well, and at other times ſcurvily and fooliſhly managed. Whence it comes to paſs, that ſome States are reputed *Sound*, and others *Diſtemper'd*. Yet we are not, on Account of theſe Imperfections, to multiply the ſeveral Species or Forms of Government, imagining that theſe ſeveral Defects make different Sorts of Governments; for theſe Vices or Defects, though different in themſelves, do not, however, either change the Nature of the Authority it ſelf, or the proper Subject in which it reſides. Now theſe Defects or Vices in Government, do ſometimes ariſe from the Perſons who adminiſter the Government; and ſometimes they ariſe from the Badneſs of the *Conſtitution* it ſelf. Whence the Firſt are ſtyl'd, Imperfections of the *Men*, and the Latter, Imperfections of the *State*.

VI. *Monarchy by*

The Imperfections of the *Men* in a *Monarchy* are, when he who poſſeſſes the Throne, is not well skilled in the Arts of Ruling, and takes

takes none, or but a very ſlight Care for the publick Good, proſtituting the ſame to be torn in pieces and ſacrificed to the Ambition or Avarice of evil Miniſters; when the ſame Perſon becomes terrible by his Cruelty and Rage; when alſo he delights, without any real Neceſſity, to expoſe the Publick to Danger; when he ſquanders away, by his Luxury and profuſe Extravagance, thoſe Supplies which were given for the Support of the Publick; when he heaps up Treaſure unreaſonably extorted from his Subjects; when he is Inſolent, Haughty, or Unjuſt; or guilty of any other ſcandalous Vice. L. N. N. l. 7. c. 5. § 10.

VII. *Ariſtocracy.*

THE Imperfections of the Men in an ARISTOCRACY are, When by Bribery and baſe Tricks, Ill Men and Fools get into the Council, and Perſons much more deſerving than they, are excluded: When the Nobles are divided into ſeveral Factions: When they endeavour to make the common People their Slaves, and to convert the publick Stock to their private Advantage.

VIII. *Men in a Democracy.*

THE Imperfections of the Men in a DEMOCRACY are, when ſilly and troubleſome Perſons ſtickle for their Opinions with great Heat and Obſtinacy; when thoſe Excellencies, which are rather beneficial than hurtful to the Common-wealth, are depreſs'd and kept under; when, thro' Inconſtancy, Laws are raſhly eſtabliſh'd, and as raſhly annull'd, and what but juſt now was very pleaſing, is immediately, without any Reaſon, rejected; and when baſe Fellows are promoted in the Government.

IX. *Men in any Government.*

THE Imperfection of the Men, which may promiſcuouſly happen in any Form of *Government*, are, When thoſe who are intruſted with the

the publick Care, perform their Duty either amiſs, or ſlightly; and when the Subjects, who ought to make Obedience their Glory, grow reſtiff and ungovernable.

X. *Faults in a Conſtitution.*

BUT the Imperfections of any *Conſtitution*, are, When the Laws thereof are not accommodated to the Temper and Genius of the People or Country; or, When the Subjects make uſe of them for fomenting inteſtine Diſturbances, or for giving unjuſt Provocations to their Neighbours; or, When the ſaid Laws render the Subjects incapable of diſcharging thoſe Duties that are neceſſary for the Preſervation of the Publick; for Inſtance, When thro' their Defect the People muſt of Neceſſity be diſſolv'd in Sloth, or rendred unfit for the Injoyment of Peace and Plenty; or when the fundamental Conſtitutions are order'd after ſuch a Manner, that the Affairs of the Publick cannot be diſpatched but too ſlowly, and with Difficulty.

XI. *How called.* L. N. N. l. 7. c. 5. § 11.

TO theſe *diſtemper'd Conſtitutions*, Men have given certain Names; as a corrupt Monarchy, is call'd *Tyranny*; a corrupt Ariſtocracy, is ſtyl'd An *Oligarchy*, or a Rump-Government; and a corrupt *Popular State*, is call'd An *Anarchy*, or a Rabble-Government. Altho' it often happens, that many by theſe Nick-names do not ſo much expreſs the Diſtemper of ſuch a Government, as their own natural Averſion for the preſent Governours and Conſtitution.

FOR, oftentimes, he who is diſſatisfied with his *King*, or a *monarchical Government*, is wont to call, even a Good and Lawful Prince, a Tyrant and Uſurper, eſpecially if he be ſtrict in putting the Laws in Execution. So he who is vex'd

vex'd becauſe he is left out of the *Senate*, not thinking himſelf Inferiour to any of the other Counſellors, out of Contempt and Envy, he calls them, A Pack of aſſuming Fellows, who tho' in no Reſpect they excell any of the Reſt, yet domineer and lord it over their Equals, nay, over better Men than themſelves.

LASTLY, Thoſe Men who are of a haughty Temper, and who hate a *Popular Equality*, ſeeing that all People in a *Democracy*, have an equal Right to give their Suffrages in Publick Affairs, tho' in every Place the common People makes the greateſt Number, they condemn that as an *Ochlocracy*, or Government by the Rabble, where there is no Preference given to Perſons of Merit, as they, forſooth, eſteem themſelves to be.

XII. *An Irregular State.* L. N. N. l. 7. c. 5. § 12.

AN *Irregular Conſtitution* is, Where that perfect Union is wanting, in which the very Eſſence of a Government conſiſts: And that not through any Fault or Male-adminiſtration of the Government, but becauſe *this Form* has been receiv'd as good and legitimate by publick Law or Cuſtom. But ſince there may be infinite Varieties of Errors in this Caſe, it is impoſſible to lay down diſtinct and certain Species of Irregular Governments. But the Nature thereof may be eaſily underſtood by one or two Examples; for Inſtance, If in a State the Nobles and the People are each veſted with a ſupreme and unaccountable Power; * Or if in any Nation the

* *See* L. N. N. l. 7. c. 5. § 14, *&c. Diſſert. Academic. de Rep. irregulari.* p. 301. *& in Append. ibid. p.* 529. *Eris Scandica.* p. 176, 187.

Nobles

Nobles are grown ſo great, that they are no otherwiſe under the King, then as unequal Confederates.

XIII. *Union of ſeveral Communities.* L. N. N. l. 7. c. 5. § 17.

We call thoſe *Unions*, when ſeveral Conſtituted Societies by ſome ſpecial Tie are ſo conjoin'd, that their Force and Strength may be look'd upon in Effect as the united Force and Strength of one civil Society. Now theſe Unions may ariſe two ſeveral Ways; the one by a *Common Sovereign*, the Other by *League* or *Confederacy*.

XIV. *Union by a common Sovereign.*

Such a *Union* happens, by means of a common Sovereign, when diverſe ſeparate Kingdoms, either by Agreement, or by Marriage, or hereditary Succeſſion, or Victory, come to be ſubject to the ſame King; yet ſo that they do not cloſe into one Realm, but each are ſtill govern'd by the ſame common Sovereign, according to their own fundamental Laws.

XV. *Union by Confederacy.* L. N. N. l. 7. c. 5. § 18.

Another Sort of *Union* may happen, when ſeveral neighbouring States or Governments are ſo connected by a perpetual League and Confederacy, that they cannot exerciſe ſome Parts of the ſupreme Power, which chiefly concern their Defence and Security againſt Strangers, but by a general Conſent of them All: Each Society, nevertheleſs, as to other Matters, reſerving to it ſelf its own peculiar Liberty and independency.

Chap.

CHAP. IX.

The Qualifications *of* Civil Government.

IT is always one Prerogative of the Government by which any Community is directed, in every Form of Commonwealth whatſoever, *to be inveſted with the ſupreme Authority:* * Whereby it has the Regulating of all Things according to its own Judgment and Diſcretion, and acts without Dependence upon any other Perſon † as Superiour, that can pretend to annul or countermand its Orders.

I. *Supreme Authority* L. N. N. l. 7. c. 6.

FOR the ſame Reaſon, a Government ſo conſtituted remains *unaccountable to all the World*; there being no Authority *above* it to puniſh it, or to examine whether its Proceedings are right or no.

II. *Unaccountable.* L. N. N. l. 7. c. 6. § 2.

AND a *third Qualification* of like Nature with the former, is, That inaſmuch as all civil Laws, of human Authority, derive both their

III. *Above the Laws.*

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* *Grotius de Jure Belli & Pacis*, lib. 1. cap. 3. § 6, &c.

† This Reſtriction muſt be carefully obſerv'd; for tho' in a *limited Monarchy*, the Sovereign can't enact a Law without the Advice and Conſent of his People repreſented in Parliament, yet notwithſtanding, this Authority of the People is not equal, much leſs ſuperiour, to that of the *Prince*: The Author's Account of the Nature of ſupreme Authority is imperfect; it ought to have comprehended diſtinctly what is equally agreeable to a *limited* and to an *Abſolute Sovereignty*.

Beginning

L. N. N. l. 7. c. 6. § 3. Beginning and their Continuance from the Favour of the Government; it is impoſſible they ſhould directly *oblige the very Power that makes them*; becauſe the ſame Power would in Conſequence be ſuperiour to it ſelf. Yet it is a happy Proſpect, and a ſingular Advantage to the Laws, when a Prince conforms himſelf, of his own Pleaſure, as Occaſion ſerves, to practiſe the ſame Things that he commands his Subjects.

IV. *Obedience due to it.* L. N. N. l. 7. c. 8. THERE is alſo a peculiar *Veneration* to be paid to the ſupreme Government under which we live; not only in obeying it in its juſt Commands, wherein it is a Crime to diſobey, but in *enduring its Severities* with the like Patience as the Rigour of ſome Parents is ſubmitted to by dutiful Children. Wherefore, when a Prince proceeds to offer the moſt heinous Injuries imaginable to his People, let them rather undergo it, or every one ſeek his Safety by Flight, than draw their Swords upon the Father of their Country.

V. *Ax abſolute Monarchy.* L. N. N. l. 7. c. 6. § 7. WE find, in *Monarchies* and *Ariſtocracies* eſpecially, that the Government is ſometime *Abſolute* and ſometime *Limited.* An *Abſolute* Monarch is one, who having no preſcrib'd Form of Laws and Statutes perpetually to go by, in the Method of his Adminiſtration, proceeds intirely according to his own Will and Pleaſure, as the Condition of Affairs and the publick Good in *his Judgment* ſeem to require.

VI. *A limited Monarchy* L. N. N. l. 7. c. 6. § 9. BUT becauſe a ſingle Perſon may be ſubject to be *miſtaken* in his Judgment, as well as to be ſeduced into evil Courſes in the Injoyment of ſo vaſt a Liberty; it is thought convenient by ſome States, * to circumſcribe the Exerciſe of

* *Grotius de Jure Belli & Pacis,* l. 1. c. 3. § 14. &c.

this

this Power within the *Limits of certain Laws*, which are propoſed to the Prince at his Succeſſion to be the future Rule of his Government. And particularly when any extraordinary Concern ariſes, involving in it the Intereſt of the whole Kingdom, for which there can be no Proviſion extant in the Conſtitution foregoing; They then oblige him to ingage in nothing without the previous Advice and Conſent of the People, or their *Repreſentatives in Parliament*; the better to prevent the Danger of his ſwerving from the Intereſt of the Kingdom.

VII. *Right and Manner of holding.* L. N. N. l. 7. c. 6. § 14.

We ſee likewiſe a Difference in the *Right and Manner of holding* ſome Kingdoms, from what it is in others. For thoſe Princes eſpecially who have acquired Dominions by Conqueſt, and made a People their own by Force of Arms, can *divide*, *alienate*, and *transfer* their Regalities at Pleaſure in the manner of a Patrimonial Eſtate. Others that are advanced by the Voice of the People, tho' they live in full Poſſeſſion of the Government during their Reigns, yet have no Pretenſions to ſuch a Power. But as they attain'd to the Succeſſion, ſo they leave it to be determin'd, either by the ancient Cuſtom, or the fundamental Laws of the Kingdom: * For which Reaſon they are compared by ſome to Uſufructuaries, or Life-Renters.

* *Grotius de Jure Belli & Pacis*, l. 1. c. 3. § 11. & l. 2. c. 7. § 12.

CHAP. X.

How Government, *eſpecially* Monarchical, *is acquired.*

I. *Conſent of the Subject free or forced.* L. N. N. l. 7. c. 7.

ALTHOUGH the *Conſent of the Subject* is a Thing to be required in Conſtituting of every lawful Government, yet it is always obtain'd the ſame way. For as it is ſometimes ſeen, that a Prince aſcends the Throne with the *voluntary Acclamations of the People*; ſo ſometimes he makes himſelf a King by his *Army*, and brings a People to conſent by *military Force*.

II. *Of Conqueſt.* L. N. N. l. 7. c. 7. § 3.

WHICH latter Method of acquiring a Government is called *Conqueſt*; it happening, as often as victorious Prince, having Fortune on his Side and a juſt Cauſe, reduces a People by his Arms to ſuch Extremities, as to compel them to receive him for their Sovereign. And the Reaſon of this Title is derived, not only from the Conqueror's Clemency in ſaving the Lives of all thoſe whom, in Strictneſs of War, he was at Liberty to deſtroy, and inſtead thereof laying only a leſſer Inconvenience upon them; but likewiſe from hence, That, when a Prince will chooſe to go to War with one that he has injured, rather than he will condeſcend to ſatisfie him in a juſt and equal Manner; * He is to be preſum'd to caſt himſelf upon the Fortune of War, with this Intention, that he does beforehand

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Grotius de Jure Belli & Pacis, lib. 3. cap. 8.

tacitly

tacitly consent to accept of any Conditions whatsoever shall befal him in the Event.

III. *Election.* L. N. N. l. 7. c. 7. §. 6.

As for the *voluntary Consent of the People*, a Government is acquired by it, when in an *Election* the People, either in order to their Settlement, or at any Time after, do nominate such a One, to bear that Office, as they believe is capable of it. Who, upon Presentation of their Pleasure to him, accepting it, and also receiving their Promises of Allegiance, thereby actually enters upon the Possession of the Government.

IV. *An Interregnum.* L. N. N. l. 7. c. 7. § 7.

But betwixt this Election of a new Prince and the Death of the former, there uses in Monarchies that are already fix'd and settled, to intervene an *Interregnum*; which signifies an imperfect Kind of State, where the People keep together merely by Virtue of their *Original Compact*: Only that this is much strengthned by the common Name and Love of their Country, and the Settlement of most of their Fortunes there; whereby all good Men are obliged to preserve the Peace with one another, and study to restore their fallen Government again as soon as they can. Yet to prevent the Mischiefs which are apt to arise in an *Interregnum*, it is very convenient the Law should provide *Administrators*, to manage the publick Affairs during the Vacancy of the Crown.

V. *Succession.* L. N. N. l. 7. c. 7. § 11.

Now though, as is said, in some Monarchies, as every King dies, they proceed again to a *New Election*: yet in others, the Crown is conferr'd upon Conditions to descend to certain Persons *successively*, (without any intervening Election) for all Time to come. The Right to which Succession may either be determined by

the *Order of the Prince,* or the *Order of the People.*

VI. *Deviſable when.* L. N. N. l. 7. c. 6. § 16.

WHEN Princes hold their Crowns in the Manner *of a Patrimony,* they have the Liberty of *diſpoſing of the Succeſſion as themſelves pleaſe.* And their declared Order therein, eſpecially if their Kingdoms are of their own Founding or Acquiring, ſhall carry the ſame Force with the laſt Teſtament of any private Man. They may divide, if they pleaſe, their Kingdom amongſt all their Children, not ſo much as excepting the Daughters. * They may, if they think fit, make an Adoptive, or their Natural Son, their Heir, or one that is not in the leaſt a-kin to them.

VII. *Succeſſion upon an Inteſtate.*

AND when ſuch an Abſolute Monarch as this dies, without leaving Order for the Succeſſion, it is to be preſumed he did not thereby intend the Kingdom ſhould expire with himſelf; but *firſt,* That it ſhould devolve to his Children (before all others) becauſe of the natural Affection of Parents to them: Then, *That* the ſame Monarchical Government ſhould continue, which he recommended by his own Example. *That* the Kingdom be kept undivided, as one Realm; becauſe any Diviſion thereof muſt give Occaſion to great Troubles, both among the Subjects and the Royal Family. *That* the Elder reign before the Younger, and the Male before the Female in the ſame Line: * And, laſtly, *That* in Default of Iſſue, the Crown ſhall devolve upon the next in Blood.

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* *Grotius de Jure Belli & Pacis,* Lib. 2. Cap. 7. § 12, &c.

† *Grotius de Jure Belli & Pacis,* l. 2. c. 7. § 12, &c.

BUT

VIII. *Succeſſion in the People.* L. N. N. l. 7. c. 7. § 11.

BUT in thoſe Monarchies, whoſe Conſtitution, from the very Beginning, was founded upon the voluntary Choice of the People, there the *Order of Succeſſion muſt have an Original Dependance upon the Will of the ſame People.* For if, together with the Crown, they did confer upon the Prince the Right of appointing his Succeſſor; whoſoever ſhall be nominated to the Succeſſion by him, will have all the Right to injoy it. If they did not confer it upon the Prince, it is to be underſtood as reſerved to themſelves: Who, if they pleaſed, might make the Crown Hereditary to their Prince's Family; either preſcribing the Order of Succeſſion to be like other ordinary *Inheritances*, ſo far as can conſiſt with the Publick Good; or ſet the ſame under any peculiar neceſſary *Limitations.*

IX. *Of Hereditary Kingdoms.* L. N. N. l. 7. c. 7. § 12.

WHEN a People have barely conferr'd upon their King an Hereditary Right, without any thing farther expreſs'd; tho' 'tis true, it may ſeem to be intended, that the Crown ſhall paſs to the Heirs in the ſame common Order of Deſcent as private Inheritances do; yet the Publick Good requires, That the Senſe of ſuch a Publick Act ſhall be taken under ſome *Reſtrictions*, notwithſtanding their not being particularly expreſs'd. As,

1. IT is ſuppoſed, That the Kingdom ſhall continue inſeparable, as one Realm.

2. THAT the Succeſſion ſhall go to the Deſcendants of the firſt Prince of the Line. Excluding,

3. ILLEGITIMATE and Adopted Children, with all that are not born according to the Laws of the Realm.

4. THAT the Heirs Male be preferr'd before the Female in the ſame Line, tho' their Inferiors in Age. And,

5. THAT each Prince eſteem his Succeſſion, not as the Gift of his Predeceſſor, but as the Bounty of the People.

X. *A Lineal Succeſſion.* L. N. N. l. 7. c. 7. § 13.

NOW, becauſe after a long Deſcent of Princes, there may eaſily ariſe Controverſies almoſt inextricable, about the Perſon of the Royal Family, who approaches neareſt in Kindred to the Prince deceaſed; therefore, for Prevention of ſuch, in many Kingdoms they have introduced a *Lineal Succeſſion*, of this Nature; *That* as every one deſcends from the Father of the Stem-Royal, they compoſe, as it were, a perpendicular Line; from whence they ſucceed to the Crown, according to the Priority of that Line to others: And tho', perhaps, the neareſt of Kin to the Prince laſt deceaſed, may ſtand in a *New* Line, different from that of *His*; Yet there is no paſſing out of the Old Line thither, 'till Death has exhauſted the ſame.

XI. *By the Father's ſide, or the Mother's.*

THE Series of Succeſſion moſt regardable, are thoſe Two, deduced from the ſeveral *Families of the Father and the Mother*; the Relation whereof is diſtinguiſh'd in the Civil Law by the Names of *Cognation* and *Agnation*. The Firſt, called alſo the *Caſtilian Law*, does not exclude the Women, but only poſtpones them to Males in the ſame Line; for it recurs to them in the Caſe of the other's *Default*. But by the Second, which is ſometimes ſtyl'd the *French* or *Salick Law*, both the Women and all their Iſſue, even Males, are excluded for ever.

WHEN

XII. *Differences about Succeſſion how to be determined.*

When, in a Patrimonial Kingdom, there ariſes a Diſpute concerning the Succeſſion, the moſt adviſeable Way to determine it, is, To put it to the Arbitration of ſome of the Royal Family; And where the Succeſſion originally depended upon the Conſent of the People, there their Declaration upon the Matter, will take away the Doubt.

Chap. XI.

The Duty *of* Supreme Governours.

I. L. N. N. l. 7. c. 9.

If we conſider what is the End and Nature of Communities, and what the Parts of Government, it will be eaſie from thence to paſs a Judgment upon the Rules and Precepts, in the Obſervance of which, conſiſts the Office of a Prince.

II. *Their proper Studies and Converſation.* L. N. N. l. 7. c. 9. § 2.

Before all Things, it is requiſite, That he apply himſelf, with the utmoſt Diligence, to the Study of *whatever may conduce to give him a perfect Comprehenſion of the Affairs belonging to a Perſon in his Station:* becauſe no Man can manage a Place to his Honour, which he does not *rightly* underſtand. He is therefore to be ſequeſtred from thoſe remote and foreign Studies, which make nothing to *this Purpoſe*: He muſt abridge himſelf in the Uſe of Pleaſures and vain Paſtimes, that would divert his Attention from *this Mark* and End.

And for his more *familiar Friends*, inſtead of Paraſites and Triflers, or ſuch as are accompliſhed in nothing but Vanities, (whoſe Company ought utterly to be rejected;) let him make Choice of Men of Probity and Senſe, experienced in Buſineſs, and ſkilful in the Ways of the World; being aſſured, that 'till he does thoroughly underſtand, as well the Condition of his own State, as the Diſpoſition of the People under him, he will never be able to apply the general Maxims of *State Prudence*, to the Caſes that will occur in Government, in ſuch a Manner as they ought. More eſpecially, let him ſtudy to be excellent in Virtues, that are of the greateſt Uſe and Luſtre in the Exerciſe of his vaſt Charge; and ſo compoſe the Manners, and all the Actions of his Life, that they may be anſwerable to the Height of his Glory.

III. *The Publick Good, the Supreme Law.* L. N. N. l. 7. c. 9. § 3.

The moſt General Rule to be obſerved by Governours, is this; *The Good of the Publick is the Supreme Law of all.* Becauſe, in conferring the Government upon them, what is there elſe intended, but to ſecure the common End for which Societies were conſtituted in the Beginning? From whence they ought to conclude, That whatſoever is not expedient for the *Publick* to be done, ought not to be accounted expedient for *themſelves*.

IV. *Laws, Diſcipline, and Religion.* L. N. N. l. 7. c. 9. § 5.

And it being neceſſary, in order to preſerve a People at Peace with one another, that the Wills and Affections of them ſhould be diſpoſed and regulated, according as it is moſt proper for the publick Good; there ought to be ſome *ſuitable Laws* for the Purpoſe preſcribed by Princes, and alſo a *publick Diſcipline* eſtabliſhed

bliſhed with ſo much Strictneſs, that ſo, Cuſtom, as well as Fear of Puniſhment, may be able to keep Men cloſe to the Practice of their ſeveral Duties. * To which End it is convenient to take Care, that the Chriſtian Religion, after the moſt pure and moſt uncorrupt Way, be profeſs'd by the Subjects of every Realm or Community; and that no Tenets be publickly taught in the Schools, that are contrariant to the Deſigns of Government.

V. *The Laws plain and few.*

It will conduce to the Advancement of the ſame End, that in the Affairs which are wont to be moſt frequently negociated between Subject and Subject, the Laws which are preſcribed be *clear* and *plain*; and *no more in Number* than will promote the Good of the Republick and its Members. For, conſidering that Men uſe to deliberate upon the Things they *ought*, or ought *not* to do, more by the Strength of their *Natural Reaſon*, than their Underſtanding in the *Laws*; whenever the Laws do ſo *abound* in Number, as not eaſily to be retained in Memory; or are ſo *particular* in their Matter, as to prohibit Things which are not prohibited by the Light of Reaſon; it muſt certainly come to paſs, That innocent Perſons, who have not had the leaſt ill Intention to tranſgreſs the Laws, will be many times unwittingly hamper'd by them, as by Snares, to their unreaſonable Prejudice, againſt the very End of Societies and Government.

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* See *Diſſertationes Academicæ de Concord. Polit. cum Religione Chriſtiana*, Lib. II. Pag. 449. And alſo *De Habitu Religionis Chriſtianæ ad Vitam Civilem*: Eſpecially *Chapters* 7, 47, 49.

VI. *And duly executed.* L. N. N. l. 7. c. 9. § 6.

YET it is in vain for Princes to make Laws, and at the ſame time ſuffer the Violation of them to paſs with Impunity. They muſt therefore *cauſe them to be put in Execution*, both for every *honeſt Perſon* to injoy his Rights without Vexation, Evaſions, or Delays; and alſo for every *Malefactor* to receive the Puniſhment due to the Quality of his Crime, according to the Intention and Malice in the committing it. They are not to extend their Pardons to any without ſufficient Reaſon. For it is an unjuſt Practice, which tends greatly to irritate the Minds of People againſt the Government, not to uſe Equality (all Circumſtances conſidered) towards Perſons that are Equal in their Deſervings.

VII. *Penalties.* L. N. N. l. 7. c. 9. § 7.

AND as nothing ought to be Enacted under a *Penalty*, without the Conſideration of ſome *Profit* to the Common-wealth, ſo in the *fixing of Penalties proportionably to that End*, it is fitting to obſerve a Moderation; with Care, that the Damage thence ariſing to the Subject on the one Hand, exceed not the Advantage that redounds to the Common-wealth on the other. In fine, to render Penalties effectual in obtaining the End intended by them, it is clear they ſhould ſtill be magnified to ſuch a Degree, as, by their Severity, to out-weigh the contrary Gain and Pleaſure, that is poſſible to proceed from chuſing the Crime.

VIII. *Injuries.* L. N. N. l. 7. c. 9. § 8.

MOREOVER, inaſmuch as the Deſign of People, in incorporating together in a Common-wealth, is their Security from Harms and Violence; it is the Duty of the ſupreme Magiſtrate to *prohibit any Injury of one Subject to another* ſo much the more ſeverely, becauſe, by their conſtant

conſtant Cohabitation in the ſame Place, they have the fairer Opportunities to do them or to reſent them: Remembring, that no Diſtinctions of Quality or Honour derive the leaſt Pretence to the Greater to inſult over the Leſs at their Pleaſure. Neither has any Subject whatſoever the Liberty to ſeek his Satisfaction for the Injuries, he preſumes are done him, in the Way of a private Revenge. For the Deſign of Government is deſtroyed by ſuch a Proceeding as this.

IX. *Miniſters of State and Judges.* L. N. N. l. 7. c. 9. § 9.

And although there is no one Prince, how ingenious ſoever in Buſineſs, that is able in his own Perſon to manage all the Affairs of a Nation of any conſiderable Extent, but he muſt have *Miniſters to participate with him in his Cares and Counſels*; Yet as theſe Miniſters borrow their Authority, in every Thing they do, from Him; ſo the Praiſe or Diſpraiſe of their Actions returns finally upon Him alſo. For which Reaſon, and becauſe according to the Quality of Miniſters, Buſineſs is done either well or ill, there lies an Obligation upon a Prince to advance *honeſt* and *fit* Perſons to Offices of Truſt in the Government, and upon Occaſion to examine into the Proceedings of the ſame; and as he finds them deſerving, to reward or puniſh them accordingly, for an Example to others to underſtand, that there is no leſs *Fidelity* and *Diligence* to be uſed in managing the *publick* Buſineſs, than one would practiſe in any *private* Affair that relates to himſelf. So when wicked People are incouraged to put their Inclinations in Practice, upon the Hopes of eſcaping very eaſily unpuniſh'd under *Judges that are ſubject to Corruption*; it is a Prince's Duty to animadvert ſeverely upon ſuch Judges,

as

as Favourers of Vice, againſt the *Safety* of the Subject, and *Quiet* of the Nation. And though the Diſpatching of the ordinary Affairs may be committed to the Miniſters Care; yet a Prince is never to refuſe to lend his Ear with Patience, when his Subjects preſent him with their Complaints and Addreſſes.

X. *Of Taxes and Duties.* L. N. N. l. 7. c. 9. § 10.

FOR Taxes and the like Duties, to which Subjects are upon no other Account obliged, than as they are *neceſſary* to ſupport the publick Charge in Peace and War; it deſerves to be the Care of Princes not to extort more, than either the *Neceſſities* or *ſignal Advantages* of the Nation require; and ſo to alleviate and ſoften them in the Ways and Means of laying them upon the Subject, that every one may find their Weight as little offenſive as it can poſſibly be; being charged upon Particulars in a *fair* and *equitable Proportion*, without favouring of one Perſon, to deceive or oppreſs another. And let not the Money that is ſo rais'd be conſumed by Princes in Luxury and Vanities, or thrown away in Gifts and needleſs Oſtentation; but laid out upon the Occaſions of the Nation; always foreſeeing, that their *Expences* be made to anſwer to their *Revenue*; and in caſe of any Failure in the latter, ſo to order Things, that by prudent Frugality and retrenching unneceſſary Expences, the Publick may not ſuffer Damage for want of a ſufficient Treaſure.

XI. *Intereſt of the Subject to be advanced by Princes.* L. N. N. l. 7. c. 9. § 11.

IT is true, Princes have no Obligation upon them to find Maintenance for their Subjects, otherwiſe than Charity directs them to a particular Care of thoſe, for whom it is impoſſible to ſubſiſt of themſelves by Reaſon of ſome Calamity undeſerved. Yet becauſe the Money, that

that is neceſſary for the Conſervation of the Publick, muſt be raiſed out of the Subjects Eſtates, in whoſe Wealth and Happineſs the Strength of a Nation does conſiſt; it therefore concerns Princes to uſe their beſt Endeavours, *that the Fortunes of their Subjects improve and flouriſh*; as particularly, by giving Orders, how the Products of the Earth and Water may be received in the moſt plentiful Meaſure; and that Men employ their Induſtry in improving ſuch Matters as are of their own Growth, and never hire foreign Hands for thoſe Works which they can conveniently perform themſelves. That all Mechanick Arts and Merchandiſe, and in Maritime Places, Navigation be incouraged, as of great Conſequence to the Commonwealth. That Idleneſs be baniſhed from amongſt them, and Frugality be reſtored by *Sumptuary Laws*, contrived on Purpoſe to avoid ſuperfluous Expences; eſpecially thoſe, which occaſion the tranſporting of Riches out of the Kingdom. Whereof, if the Prince is pleaſed to ſet an Example in his own Perſon, it is likely to prove of greater Force than all the *Laws* beſide.

XII. *Factions and Parties.* L. N. N. l. 7. c 9. § 12.

FARTHER, Since the *internal* Health and Strength of a Nation proceeds in a particular Manner from the *Unity that is among the People*; and according as this happens to be more and more perfect, the Power of the Government diffuſes it ſelf through the whole Body with ſo much the greater Efficacy: It is for this Reaſon incumbent upon Princes, to hinder, as well the Growth of *publick Factions*, as of *private Aſſociations* of particular Perſons by Agreements amongſt themſelves. As alſo to ſee, that neither all, nor any of the Subjects, place a greater

greater Dependance, or rely more for Defence and Succour on any other Perſon, within or without the Realm, under any Pretence whatſoever, whether Sacred or Civil, than on their lawful Sovereign, in whom alone, before others, all their Expectations ought to be repoſed.

XIII. *Of War and Peace with foreign Nations.* L. N. N. l. 7. c. 9. § 13.

LASTLY, Since the Peace of Nations in reference to one another depends upon no very great Certainties; it ought to be the Endeavour of Princes to incourage *Valour and Military Studies* in their Subjects; having all things, as Fortifications, Arms, Men, and Money (which is the Sinews of Civil Affairs) ready prepared, in caſe of any Attack from abroad, to *repel* it: Though not voluntarily to *begin* one upon another Nation, even after ſufficient Cauſe of War given, unleſs when invited by a very ſafe Opportunity, and that the Publick be in a good Condition conveniently to go thro' with the Undertaking. For the ſame Reaſon it is proper to obſerve and ſearch into the Counſels and Proceedings of Neighbours with all Exactneſs, and to enter with them into *Leagues and Alliances* as prudently, as ſo great a Concern requires.

CHAP.

CHAP. XII.

Of the Special Laws *of a* Community, *relating to the* Civil Government.

IT Now remains, That we take a view of the reſpective *Parts* of Supreme Government, together with ſuch *Circumſtances* thereunto belonging, as we find are worthy to be obſerv'd. In the firſt Place, there are the *Civil Laws*, meaning the Acts and Conſtitutions of the higheſt *Civil* Authority for the Time being, ordained to direct the Subject in the Courſe of his Life, as to what Things he ought to do, and what to omit. I. *What they are.* L. N. N. l. 8. c. 1. § 1.

THESE are called *Civil*, upon two Accounts eſpecially: That is, Either in Regard to their *Authority*, or their *Original*. In the firſt Senſe, all manner of Laws whatſoever, by the Force whereof Cauſes may be tried and decided in a Court of Civil Judicature, let their Original be what it will, may paſs under that Denomination. In the other, we call only thoſe Laws *Civil*, which derive their Original from the Will of the Supreme Civil Government, the Subjects whereof are all ſuch Matters, concerning which neither the Laws of God or Nature have determined; yet a due Regulation and Settlement of them is found to be very conducive and advantagious to particular Commonwealths. II. *Why ſo called.*

III. *The Law of Nature to be reinforced by them.* L. N. N. l. 8. c. 1. § 2.

As nothing therefore ought to be made the Subject of a Civil Law, but what relates to the *Good* of the Commonwealth that does ordain it; ſo it ſeeming in the higheſt Degree expedient towards the Regularity and Eaſe of living in a Community, That in particular *the Law of Nature ſhould be diligently obſerved by all People*; it lies upon Supreme Governours to authenticate the ſaid Law with the Force and Efficacy of a *Civil* Law. For ſince indeed the Wickedneſs of a great Part of Mankind is arrived to a Degree, which neither the apparent Excellency of the Law of Nature, nor the Fear of God Himſelf, is ſufficient to reſtrain; the moſt effectual Method remaining, to preſerve the Happineſs of living in a Community, is, by the Authority of the Government to inforce the *Natural* by the *Civil Laws*, and ſupply the Diſability of the one with the Power of the other.

IV. *The Penal Sanction.*

Now the *Force and Power, which is in Civil Laws*, conſiſts in this, That to the Mandatory Part of the Statute, concerning Things to be done or omitted, there is annexed a *Penal Sanction*, aſſigning the Puniſhment that is to be inflicted upon a Man by a Court of Juſtice for omitting what he ought to do, or doing what he ought to omit. Of which Kind of Sanctions, the Laws of Nature being of themſelves deſtitute, the breaking of them does not fall under the Puniſhment of any Court in this World; but yet it is reſerved for the Judgment of the Tribunal of GOD.

V. *Of Actions*

More particularly, it is inconſiſtent with the Nature of living in a Community, for any one by his *own* Force to exact and extort what himſelf accounts to be his Due. So that here the

the *Civil* Laws come in, to the Aſſiſtance of the *Natural*. For they allow the Creditor the Benefit of an *Action*, whereby the Debt that is owing to him by Virtue of a Law of Nature, with the Help of the Magiſtrate, may be demanded and recover'd in a Court of Juſtice, according to the Courſe of the Laws of the Nation: Whereas without ſuch Inforcement of the ſaid Laws, you can force nothing from a Debtor againſt his Will; but muſt intirely depend upon his Conſcience and Honour. The Civil Laws admit of *Actions* chiefly in the Caſe of thoſe Obligations that are contracted betwixt Parties by an expreſs Bond or Covenant. For as to other Affairs, where the Obligation ariſes from ſome *indefinite* Duty of the Law of Nature, the Civil Laws make them not ſubject to an *Action* at all; on purpoſe to give occaſion to good Men to exerciſe their Virtue, to their more extraordinary Praiſe, when it is evident, they do that which is juſt and honeſt without Compulſion. Beſide that, frequently, the Point in Queſtion may not be of Conſequence enough to trouble a Court about it.

VI. *The Proſecution of them.*

And whereas the Law of Nature commands many Things at large, in an indefinite Manner, and leaves the Application of them to every one in his own Breaſt; the Civil Laws being careful of the Honour and Tranquillity of the Community, preſcribe a *certain Time*, *Manner*, *Place*, *Perſons*, *and other Circumſtances*, for the due Proſecution of thoſe Actions, with the Propoſal of a Reward upon Occaſion, to incourage People to enter upon them. And when any Thing is obſcure in the Law of Nature, the Civil Laws *explain* it. Which Explication the

the Subjects are obliged to receive, and follow, although their own private Opinions do otherwise lead them to a contrary Sense.

VII. *Form.* So that there being thus a Number of Actions, left by the Law of Nature to be consider'd according to the Will and Judgment of each Person, which nevertheless in a Common-wealth ought to be regularly stated for the greater Decency and Quiet of the same; it uses to be the Care of the Civil Laws to reduce all those Actions, with their respective Concerns, to a *proper Form*; as we see it is in Wills, Contracts, and divers other Cases: from whence it comes, that they *limit* us (as they do) in the Exercise of several Rights, to the Use whereof the Law of Nature left us much at *Liberty*.

VIII. *The Obedience due to the Civil Laws.* For so far as the Civil Laws do not openly contradict the Law of GOD, the Subjects stand *obliged to obey them*, not merely out of Fear of Punishment, but by an internal Obligation confirm'd by the Precepts of the Law of Nature it self. This being one of them, amongst others, That *Subjects ought to obey their lawful Sovereigns*.

IX. *And to the particular Commands of the Sovereign,* L. N. N. l. 8. c. 1. § 6. Nay, it is their Duty to obey even the *Personal Commands* of their Sovereigns, no less than they do the Common Laws of the Kingdom. Only here they must observe, whether the Thing commanded is to be done by them *as in their own Names*, in the Quality of an Action belonging *properly to Subjects to do*; or whether it be barely to undertake the *Execution* of an Affair for the Sovereign, in Consequence of that Authority which he has to command it. *

In

* This Distinction will by no means hold good; for if

In the latter Caſe, the Neceſſity that is impoſed upon the Subject excuſes him from Sin, tho' to command the Fact it ſelf is a Sin in the Sovereign. But in the Other, for a Subject, as in his *own* Name, to do a Thing which is repugnant to the Laws of God and Nature, can never be Lawful. And this is the Reaſon, why, if a Subject takes up Arms in an unjuſt War, at the Command of his Sovereign, he ſins not: Yet if he condemns the Innocent, or accuſes and witneſſes againſt them falſely upon the like Command, he ſins. For as he ſerves in War, he ſerves in the Name of the Publick; but acting as a Judge, Witneſs, or Accuſer, he does it in his Own.

CHAP. XIII.

Of the Power of Life *and* Death.

I. *Twofold.*

THE Civil Government, that is ſupreme in every State, has a Right over the Lives of its Subjects, either *indirectly*, when it expoſes their Lives in Defence of the Publick; or *directly*, in the Puniſhment of Crimes.

II. *Indirectly.*

FOR when the Force of Foreigners in an Invaſion (which often happens) is to be repell'd by Force; or, That we cannot without the

the Thing commanded by the Sovereign, be manifeſtly Criminal, Unjuſt, and Unrighteous, let it be commanded in what Way and Method it will, and inforced with the greateſt Threats poſſible, it ought not to be comply'd with. See *L. N. N.* Lib. 1. Cap. 1. § 24.

Uſe of Violence obtain our Rights of them; it is lawful for the Government, by its ſupreme Authority, to compel the Subjects to enter into its Service; not thereby purpoſely intending their Death, only their Lives are expoſed to ſome Danger of it. On which Occaſions, that they may be able to behave themſelves with Skill and Bravery, it is fit they ſhould be exerciſed and prepar'd for the Purpoſe. Now the Fear of Danger ought not to prevail with any Subject, to render himſelf uncapable of undergoing the Duties of a Soldier; much leſs ought it to tempt a Man that is actually in Arms, to deſert the Station appointed him; who ought to fight it out to the laſt Drop of his Blood, unleſs he knows it to be the Will of his Commander, that he ſhould rather preſerve his Life than his Poſt; or if he be certain that the maintaining of ſuch Poſt is not of ſo great Importance, as the Preſervation of the Lives ingaged therein.

L. N. N. l. 8. c. 2.

III. *Directly.* L. N. N. l. 8. c. 3. § 1.

THE Government claims a Power to take away the Lives of Subjects *directly*, upon the Occaſion of any heinous Crimes committed by them; * whereon it paſſes Judgment of Death by way of *Puniſhment:* As likewiſe the Goods and Chattels of Criminals are ſubject to the Cenſure of the Law. So that here ſome general Things concerning the Nature of Puniſhments, come to be diſcours'd.

IV. *Of Puniſhments.* L. N. N. l. 8. c. 3. § 4.

PUNISHMENT is an Evil that is *ſuffered*, in Retaliation for another that is *done*. Or, A certain grievous Pain or Preſſure, impoſed upon a Perſon by Authority, in the Manner of a Force, with Regard to an Offence that has

* *Grotius de Jure Belli & Pacis*, l. 2. c. 20, & 21.

been

been committed by him. For although the *doing* of ſome Things may oftentimes be commanded in the Place of a Puniſhment, yet it is upon this Conſideration, that the Things to be done are troubleſome and laborious to the Doer, who will therefore find his Sufferings in the Performance of ſuch Action. A Puniſhment alſo ſignifies its being inflicted againſt the Wills of People: For it would not otherwiſe obtain its End; which is, to deter them from Crimes by the Senſe of its Severity: An Effect it never would produce, if it were only ſuch, as an Offender is willing and pleas'd to undergo. As for other Sufferings, which happen to be undergone in Wars and Engagements; or which one bears innocently, being wrongfully and injuriouſly done him; the Former not being inflicted by Authority, and the Other not referring to an antecedent Crime, they do neither of them import the proper Senſe and Meaning of a *Puniſhment*.

V. *Inflicted by the Government.*

By our *Natural Liberty*, we enjoy the Privilege to have no other Superiour but GOD over us, * and only to be obnoxious to Puniſhments

* The Author here reaſons on a falſe *Hypotheſis*. He pretends, as is plain from what is here laid down, That no one can inflict any Puniſhment on another, unleſs he be his Superiour. Now in the State of Nature all are equal; and then all Natural Laws would be uſeleſs and inſignificant, if a Power, in ſuch Caſe, were no where lodged to puniſh thoſe who violate them, either with Reſpect to any private Perſon, or to Mankind in general; the Preſervation of which is the End of theſe Laws, to the Obſervation of which all Men ſtand under a common Obligation. In this independent State, every one has a Right to put theſe Laws in Execution, and to puniſh the Perſon who violates them. See *L. N. N.* Lib. 8. Chap. 3. § 4.

L. N. N. l. 8. c. 3. § 7.

Divine. But ſince the Introduction of *Government*, it is allow'd to be a Branch of the Office of thoſe in whoſe Hands the Government is intruſted, for the Good of all Communities; that upon the Repreſentation of the unlawful Practices of Subjects before them, they ſhould have Power effectually to *coerce*, [puniſh and reſtrain] the ſame, that People may live together in Safety.

VI. *The Benefit of them.*

NEITHER does there ſeem to be any Thing of Inequality in this; that *he who* Evil *does* ſhould Evil *ſuffer*. Yet in the Courſe of Human Puniſhments, we are not ſolely to regard the Quality of the Crime, but likewiſe to have an Eye upon *the Benefit of the Puniſhment:* By no means executing it on purpoſe to feed the Fancy of the Party injur'd, or to give him Pleaſure in the Pains and Sufferings of his Adverſary: Becauſe ſuch Kind of Pleaſure is abſolutely inhumane, as well as contrary to the Diſpoſition of a good Fellow-Subject.

VII. *The End of them.* L. N. N. l. 8. c. 3. § 8.

THE *Genuine End of Puniſhments in a State*, is, The Prevention of Wrongs and Injuries; which then have their Effect, when he who does the Injury is *amended*, or for the future *incapacitated* to do more, or others taking *Example* from his Sufferings are deterr'd from like Practices; or, to expreſs it a nother way, That which a Government deſigns in the Matter of Puniſhments, is the *Good*, either of the Offender, or the Party offended, or generally of All its Subjects.

VIII. *Upon the Offender.* L. N. N. l. 8. c. 3. § 9.

FIRST, We conſider the *Good of the Offender:* In whoſe Mind the Smart of the Puniſhment ſerves to work an Alteration towards Amendment, and corrects the Deſire of doing

the

the ſame again. Divers Communities leave ſuch Kind of Puniſhments as are qualified with this End, to be exercis'd by Maſters over the Members of their own Families. But it never was thought good they ſhould proceed ſo far as to *Death*, becauſe, he that is dead is paſt *Amendment*.

IX. *Upon the Party offended.* L. N. N. l. 8 c. 3. § 11.

IN the next Place, a Puniſhment intends the *Good of the Party offended:* ſecuring him, that he ſuffer not the like Miſchief for the future, either from the ſame or other Perſons. He becomes ſecure from being again injured in like Manner by the ſame Perſon; firſt, By the Death of the Criminal; or, ſecondly, If he be allow'd Life, by depriving him of Power to hurt; as, by keeping him in Cuſtody, taking his Arms, or other Inſtruments of Miſchief, from him, ſecuring him in ſome diſtant Place, and the like; or, thirdly, By obliging him to learn, at his own Peril, not to incur farther Guilt, or offend any more. But then to ſecure the Party offended from ſuffering the like Injury from other Hands, it is neceſſary that the Offender be puniſhed in a moſt Open and Publick Manner, whereby the Criminal may become an Example to all others; and that his Puniſhment be accompanied with ſuch Circumſtances of *Form* and *Pomp*, as are apt to ſtrike a Dread into as many as behold it.

X. *Upon All.* L. N. N. l. 8. c. 3. § 12.

IN a Word, the *Good of all People* is intended by the Execution of Puniſhment in this Manner. For by this means, Care is taken, that he who has done a Miſchief to one, ſhall do no ſuch Miſchief again to another: The Terrour of whoſe Example may alſo be an Antidote for the reſt againſt the Temptations to

his Crime: And this Good accrues after the ſame Manner as the former.

XI. *Internal Acts of the Mind, not ſubject to them.* L. N. N. l. 8. c. 3. § 14.

BUT if, together with the End of Puniſhments, we conſider the Condition of Human Nature, we ſhall ſee, That *all Sins are not of that Quality, that they muſt neceſſarily fall under the Sentence of a Court of Juſtice.* The *Acts of the Mind within it ſelf*, which are merely internal; ſuch as, Thinking upon a Sin with Delight, coveting, deſiring, reſolving to do an ill Thing, but without effect; though they ſhould be afterwards made known by a Man's own Confeſſion, yet are all exempted from the Stroke of human Puniſhments. For ſo long as thoſe *internal* Motions have not broken forth into Action, nor occaſion'd the Prejudice of any one, whom does it concern or profit to cauſe the Author to ſuffer for the ſame?

XII. *Nor minute Lapſes.*

IT would alſo be over ſevere in Laws, to puniſh the more minute Lapſes which may daily happen in the Actions of Men; when, in the Condition of our Natures, the greateſt Attention cannot prevent them.

XIII. *And other Actions.* L. N. N. l. 8. c. 3. § 14.

THERE are many Inſtances of Actions more, of which the Publick Laws diſſemble the taking of any Notice, *for the ſake of the Publick Peace.* As ſometimes, becauſe a good Act ſhines with greater Glory, if it ſeems not to have been undertaken upon Fear of human Puniſhment; or, perhaps, it is not altogether worth the troubling of Judges and Courts about it; or, it is a Matter extraordinarily difficult to be decided; or it may be ſome old inveterate Evil, which cannot be removed, without cauſing a Convulſion in the State.

IN

In fine, it is abſolutely neceſſary, That *all thoſe Diſorders of the Mind ſhould be exempted from Puniſhment, that are the Effects of the common Corruption of Mankind*; ſuch as Ambition, Avarice, Rudeneſs, Ingratitude, Hypocriſy, Envy, Pride, Anger, private Grudges, and the like. All theſe of Neceſſity, muſt be exempted from the Cognizance of *Human* Judicatures, ſo long as they break not out into publick Enormities; ſeeing they abound to that Degree, that if you ſhould ſeverely purſue them with Puniſhments, there would be no People left to be the Subjects of Government. XIV. *Nor the Vices of the Mind.*

Farther, When there have been Crimes committed, which are puniſhable by the Civil Judicature, it is not *always* neceſſary to execute the Sentence of Juſtice upon them. For in ſome Caſes a *Pardon* may poſſibly be extended to Criminals, with a great deal of *Reaſon*, (as it never ought to be granted without it;) and amongſt other Reaſons, *theſe* eſpecially may be ſome: *That* the Ends, which are intended by Puniſhments, ſeem not ſo neceſſary to be attended to in the Caſe in Queſtion: *Where* a Pardon may produce more *Good* than the Puniſhment, and the ſaid Ends be more conveniently obtain'd another way: *That* the Priſoner can allege thoſe excellent Merits of his own or of his Family towards the Common-wealth, which deſerve a ſingular Reward: *That* he is famous for ſome remarkable rare Art or other; or, it is hoped, will waſh away the Stain of his Crime by performing ſome Noble Exploit: *That* Ignorance had a great Share in the Caſe, tho' not altogether ſuch as to render the Criminal blameleſs: Or, *That a particular* Reaſon XV. *Of Pardon.* L. N. N. l. 8. c. 3. § 15.

of the Law ceaſes in a Fact of the ſame Nature with his. For theſe Reaſons, and oftentimes for the *Number* of the Offenders, being very great, Pardons muſt be granted, rather than the Community ſhall be exhauſted by Puniſhments.

XVI. *The greatneſs of a Crime* L. N. N. l. 8. c. 3. § 18.

To take an Eſtimate of the *Greatneſs of any Crime*, there is to be conſider'd, firſt, The Object againſt which it is commited; how Noble and Precious *that* is: Then, The *Effects*; what Damage, more or leſs it has done to the Common-wealth: And next, The *Pravity* of the Author's Intention, which is to be collected by ſeveral Signs and Circumſtances: As, Whether he might not eaſily have reſiſted the Occaſions that did tempt him to it? and beſides the common Reaſon, Whether there was not a peculiar one for his Forbearance? What *Circumſtances* aggravate the Fact? or, Is he not of a Soul diſpos'd to reſiſt the Allurements of a Temptation? Inquiring yet farther, Whether he was not the *Principal* in the Commiſſion? or, Was he ſeduced by the Example of others? Did he commit it once, or oftner, or after Admonition ſpent in vain upon him?

XVII. *Meaſure and Kind of Puniſhment.* L. N. N. l. 8 c. 3. § 24.

But for the preciſe *Kind and Meaſure of Puniſhment*, that is fit to be pronounced upon each Crime, it belongs to the Authority of the Government to determine it, with an intire Regard to the Good of the Common-wealth. Whence the *ſame* Puniſhment may, and oftentimes is, impos'd upon two *unequal* Crimes; underſtanding the Equality that is commanded to be regarded by Judges, to mean the particular Caſe of thoſe Criminals, who being guilty of the ſame Kind of Fact, the one ſhall

ſhall not be acquitted, and the other condemned without very ſufficient Reaſon. And although Men ought to ſhew to one another all the Mercy and Tenderneſs that may be; yet the Good of the Nation, and the Security of its Subjects, require, upon Occaſion, when either a Fact appears moſt pernicious to the Publick, or there is need of a ſharp Medicine to obviate the growing Vices of the Age, that the Government ſhould *aggravate its Puniſhments:* which deſerve at all times to be carried high enough, to be ſufficient to controll the Propenſity of Men towards the Sins againſt which thoſe Puniſhments are levell'd. And let the Government obſerve, That no greater Puniſhments be inflicted, than the Law aſſigns, unleſs the Fact be aggravated by very heinous Circumſtances.

XVIII. *The Perſon of the Offender.* L. N. N. l. 8. c. 3. § 25.

MOREOVER, Since the ſame Puniſhment, not affecting all Perſons alike, meets with various Returns to the Deſign thereof, of reſtraining in them the Itch of Evil-doing, according to the Diſpoſition of every one that incounters it; therefore both in the Deſignation of Puniſhments in general, and in the Application of them to Particulars, it is proper *to conſider the Perſon of the Offender*, in Conjunction with as many Qualities as concur to augment or diminiſh the Senſe of Puniſhment; as, Age, Sex, Condition, Riches, Strength, and the like.

XIX. *Effects of one Man's Crime upon another*

NOT but that it frequently happens, that the Crime of one *ſhall occaſion the Inconvenience of many others*, even to the Intercepting of a future Bleſſing from them that they juſtly expected to receive. So when an Eſtate is confiſcated

for

L. N. N. l. 8. c. 3. § 33. for a Crime done by the Parents, the innocent Children are plunged into Beggary. And when a Priſoner upon Bail makes his Eſcape, the Bail is forced to anſwer the Condition of the Bond, not as a *Delinquent*, but becauſe it was his voluntary Act to oblige himſelf to ſtand to ſuch an Event.

XX. *Crimes done by Communities.* L. N. N. l. 8. c. 3. § 28. FROM whence it follows, That as no Man in a Court of Civil Judicature, can properly be puniſh'd for another's Crime; ſo in the *Commiſſion of a Crime by a Community*, whoever does not conſent to it, ſhall not be condemn'd for it; nor ſuffer the Loſs of any Thing he does not hold in the Name and Service of the Community, farther than it is uſual on theſe Occaſions for the Innocent to feel the Smart of the *Common Misfortune*. When all thoſe are dead, who did conſent or aſſiſt towards the ſaid Crime; then the Guilt thereof expires, and the Community returns to its priſtine Innocency.

CHAP. XIV.

Of REPUTATION.

I. *Defined.* L. N. N. l. 8. c. 4. § 1. REPUTATION in General, is that *Value* ſet upon Perſons in the World, on ſome account or other, by which they are compar'd and equaliz'd, preferr'd or poſtpon'd to others.

II. *Divided.* IT is divided into *Simple*, and *Accumulative*; and may be conſider'd as to both, either in a People

People living *at their Natural Liberty*, or united together under a Government.

III. *Simple Reputation in a State of Nature.* L. N. N. l. 8. c. 4. § 2.

SIMPLE *Reputation amongſt a People in their Natural Liberty*, conſiſts chiefly in this, That by their Behaviour, they have the Honour to be eſteem'd, and treated with, as Good Men, ready to comport themſelves in Society with others, according to the Preſcription of the Law of Nature.

IV. *How preſerved.* L. N. N. l. 8. c. 4. § 3.

THE Praiſe whereof remains *Entire*, ſo long as no evil and enormous Fact is knowingly and wilfully done by them, with a wicked Purpoſe, to violate the Laws of Nature towards their Neighbour. Hence every one naturally is to paſs for a Good Man, 'till the contrary is prov'd upon him.

V. *Diminiſhed, and repaired.* L. N. N. l. 8. c. 4. § 4.

THE ſame is *diminiſh'd* by Tranſgreſſion againſt the Law of Nature maliciouſly, in any heinous Matters; which ſerves alſo as a Caution for the future, to treat with him that does it, with greater Circumſpection; though this *Stain may be waſh'd of*, either by a voluntary Reparation of Damages, or the Teſtimonies of a ſerious Repentance.

VI. *Loſt, and recovered.* L. N. N. l. 8. c. 4. § 5.

BUT by a Courſe of Life directly tending to do Miſchief, and the ſeeking of Advantages to themſelves, by open and promiſcuous Injuries towards others, the Reputation deſcrib'd is *totally deſtroyed*. And till Men of this ſort repent, and change their Ways, they may lawfully be uſed as Common Enemies, by every one, that is in any manner liable to come within the Reach of their Outrages: Since it is not impoſſible, even for thoſe Men, to *retrieve their Credit*; if after they have repair'd all their Damages and obtain'd their Pardons, they

they renounce their vicious, and embrace for the Time to come, an honeſt Courſe of living.

VII. *Under Government.* L. N. N. l. 8. c. 4. § 6.

SIMPLE Reputation, with regard to ſuch as live under Civil Government, is that Sort of Eſteem, by which a Man is looked on at the loweſt, as a common but a ſound Member of the State: Or when a Man hath not been declar'd a corrupt Member, according to the Laws and Cuſtoms of the State, but is ſuppoſed to be a good Subject, and is look'd upon accordingly, and valu'd for ſuch.

VIII. *Loſt by an ill Condition of Life,* L. N. N. l. 8. c. 4. § 7.

HERE therefore the ſame *periſhes*, either by Reaſon *of the Courſe of a Man's Life*, or in *Conſequence of ſome Crime.* The firſt is the Caſe of *Slaves*; whoſe Condition, tho' naturally having no Turpitude in it, in many Communities places them, if poſſible, below Nothing. As likewiſe that of *Panders*, *Whores*, and ſuch like, whoſe Lives are accompanied with Vice, at leaſt the Scandal of it. For tho', whilſt the Community thinks fit publickly to tolerate them, they participate of the Benefit of the Common Protection; yet they ought however to be excluded the Society of Civil Perſons. And we may conclude no leſs of others, who are employ'd in Works of Naſtineſs and Contempt, tho' *naturally* not including any Vitiouſneſs in them.

IX. *And his Crimes.*

BY *Crimes* Men utterly loſe their Reputation, when the Laws ſet a Brand of Infamy upon them for the ſame; either by Death, and ſo their Memory is ſet under Diſgrace for ever; or by Baniſhment out of the Community, or by Confinement, being conſider'd as ſcandalous and corrupt Members.

OTHERWISE

OTHERWISE it is very clear, that the *Natural Honour of no Man can be taken from him ſolely by the Will of the Government.* For how can it be underſtood, that the Government ſhould have a Power collated on it, which conduces in no Degree to the Benefit of the Common-wealth? So neither does it ſeem, as if a real Infamy can be contracted by executing the Commands of the Government, barely in the Quality of a Miniſter, or Officer. X. *Otherwiſe Indelible.* L. N. N. l. 8. c. 4. § 9.

ACCUMULATIVE *Reputation* we call *that*, by which Perſons, reciprocally equal as to their Natural Dignity, come to be preferr'd to one another according to thoſe Accompiſhments, which uſe to move the Minds of People to pay them Honour: For *Honour* is properly, the Signification of our Judgment concerning the Excellency of another Perſon. XI. *Accumulative Reputation.* L. N. N. l. 8. c. 4. § 11.

THIS Sort of Reputation may be conſider'd, either as amongſt thoſe who continue in the *Liberty of a State of Nature*, or amongſt the *Members of the ſame Common-wealth.* We will examine, what the *Foundations* of it are, and how they produce in People, both a *Capacity* to expect the being Honoured by others; and an *actual Right, ſtrictly ſo called*, to demand it of them as their Due. XII. *Twofold.*

THE *Foundations of an Accumulative Reputation*, are in General reckoned to be all Manner of Endowments, either *really* containing, or ſuch as are ſuppoſed to contain, ſome great Excellency and Perfection, which has plainly a Tendency in its Effects to anſwer the Ends of the Laws of Nature or Societies. Such are Acuteneſs and Readineſs of Wit, a Capacity to underſtand ſeveral Arts and Sciences, a ſound Judgment in Buſineſs, XIII. *The Grounds of it.* L. N. N. l. 8. c. 4. § 12.

Buſineſs, a ſteddy Spirit, immoveable by outward Occurrences, and equally ſuperiour to Flatteries and Terrours: Eloquence, Beauty, Riches; but, more eſpecially the Performing of good and brave Actions.

XIV. *The Diſtinction of a Capacity and a Right to it.*

ALL theſe Things together, produce a *Capacity* to receive Honour, *not a Right.* So that if any Perſon ſhould decline the Payment of his Veneration to them, he may deſerve to be taken Notice of for his Incivility, but not for an Injury. For a *perfect Right* to be honoured by others, that bear the Enſigns thereof, proceeds either from an Authority over them; or from ſome mutual Agreement; or from a Law that is made and approved by one Common Lord and Maſter.

L. N. N. l. 8. c. 4. § 14.

XV. *Amongſt Princes and States.*

AMONGST *Princes* and *independent States*, they uſually alledge, for *Honour and Precedence*, the Antiquity of their Kingdoms and Families, the Extent and Richneſs of their Territories, their Power Abroad and at Home, and the Splendour of their Styles. Yet neither will all theſe Pretences beget a *perfect Right* in any Prince or State to have the Precedence of others, unleſs the ſame has been firſt obtained by Conceſſion or Treaty.

L. N. N. l. 8. c. 4. § 20.

XVI. *Amongſt Subjects.*

AMONGST *Subjects*, the *Degree of Honour is determined by the Prince*, who wiſely therein regards the Excellency of each Perſon, and his Ability to advance the publick Good. And whatever Honour a Subject receives in this Nature, as he may juſtly *claim* it againſt his Fellow-Subject, ſo he ought no leſs to ſatisfie himſelf in the quiet Enjoyment of it.

L. N. N. l. 8. c. 4. § 24.

CHAP.

CHAP. XV.

Of the Power *of* Governours *over the Goods of their* Subjects.

AS it wholly lies at the Pleaſure of ſupreme Governours, to appoint with what Reſtriction they will allow their Subjects to have Power over the Goods which *themſelves* derive upon them; ſo alſo over the Goods of the Subjects *own acquiring* by their proper Induſtry or otherwiſe, the ſaid Governours claim a *threefold Kind of Right*, reſulting from the Nature, and as being neceſſary to the End, of Communities. I. *Threefold.* L. N. N. l. 8. c. 5. § 1.

THEIR Firſt, conſiſts in this; That it belongs to them to *preſcribe Laws* to the Subjects, about the Meaſure and Quality of their Poſſeſſions; and which way to transfer the ſame from Hand to Hand, with other Particulars of the like Nature; and how to apply them in the Uſe to the beſt Advantage of the whole Body. II. *By Laws.* L. N. N. l. 8. c. 5. § 3.

BY the Second, they claim to appropriate to themſelves, out of the Goods of the Subjects, a *Portion* by the Name of *Tribute* and *Cuſtoms*. And it is but reaſonable, that ſince the Lives and Fortunes of all the Members are defended by the Community, the neceſſary Charges thereof ſhould be defrayed by a general Contribution. For he muſt be very impudent indeed, who will enjoy the Protection and Priviledges of a Place, and yet contribute nothing in Goods or Service towards its Preſervation. Only herein there will be great Occaſion for Governours to accommodate themſelves with Prudence to the querulous Temper III. *By Taxes and Cuſtoms.* L. N. N. l. 8. c. 5. § 4.

Temper of common People; and let them endeavour to levy the Money the moſt inſenſibly that they can: Obſerving firſt an Equality towards all, and then to lay the Taxes rather upon the ſmaller Commodities of various Kinds, than upon the Chief in a more uniform Way.

IV. *By Seiſure for publick Uſe extraordinary.* L. N. N. l. 8. c. 5. § 7.

THE Third, is a * *Right of Extraordinary Dominion*, conſiſting in this; That upon an *urgent Neceſſity of State*, the Goods of any Subject, of which the preſent Occaſion has need, may be taken and applied to *publick Uſes*, tho' far exceeding the Proportion, that the Party is bound to contribute towards the Expences of the Common-wealth, For which Reaſon, as much (if it be poſſible) ought to be refunded to him again, either out of the publick Stock, or by the Contribution of the Reſt of the Subjects.

V. *Publick Revenues unalienable.* L. N. N. l. 8. c. 5. § 9.

BESIDE theſe three Pretenſions over the *private*, in divers Communities there are ſome particularly call'd, the *publick Eſtate*; which carry alſo the Name of the *Kingdom's, or the Prince's Patrimony*, according as they are diſtributed into the *Treaſury* or the *Privy Purſe*. The Latter ſerves for the Maintenance of the Prince and his Family; who has a Property in it during Life, and may diſpoſe of the Profits thence ariſing at his Pleaſure: But the Uſe of the Other is appropriated for the publick Occaſions of the Kingdom; the Prince officiating therein as Adminiſtrator only, and ſtanding obliged to apply all to the Purpoſes to which they are deſigned. And neither of the two *Patrimonies* can be *alienated* by the Prince without the People's Conſent.

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* *Grotius de Jure B. & P.* l. 1. c. 1. § 6. L. 2. c. 14. § 7. L. 3. c. 19. § 7. *Junct.* l. 3. c. 1. § 15.

MUCH

MUCH leſs can a *whole Kingdom* (that is not held *patrimonially*) or any *Part* of it, be *alienated without their Conſent to it:* And in the latter Caſe particularly the *Conſent of that Part that is to be alienated.* As on the other Hand no Subject againſt the Will of his Community, can poſſibly *diſingage himſelf from the Bonds of his Duty and Allegiance to it*; unleſs the Force of foreign Enemies reduces him to ſuch a Condition, that he has no other Way to be ſafe.

VI. *Neither Royal Power nor Allegiance, alienable.* L. N. N. l. 8. c. 5. § 10.

CHAP. XVI.

Of WAR *and* PEACE.

ALTHO' nothing is more agreeable to the *Laws of Nature*, than the mutual Peace of Men with one another, preſerved by the voluntary Application of each Perſon to his Duty; living together in a State of Peace, being a peculiar Diſtinction of Men from Brutes; yet it is ſometimes both *Lawful and Neceſſary to go to War*, when by means of another's Injuſtice, we cannot, without the Uſe of Force, preſerve what is our own, nor injoy thoſe Rights which are properly ours. But here common Prudence and Humanity do admoniſh us * to forbear our Arms there, where the Proſecution of the Injuries we reſent, is likely to return more Hurt upon us and ours, than it can do Good.

I. *Neceſſity of War ſometimes.* L. N. N. l 8. c. 6. § 2.

THE *juſt Cauſes upon which a War may be undertaken*, come all to theſe: The Preſervation

II. *Juſt Cauſes of War.*

* *Grotius de Jure Belli & Pacis*, l. 1. c. 2.

L. N. N. l. 8. c. 6. § 4.

of our ſelves, and what we have, againſt an unjuſt Invaſion; and this Sort of War is called * *Defenſive.* The Maintenance and Recovery of our Rights from thoſe that refuſe to pay them: The Reparation of Injuries done to us, and Caution againſt them for the future. And this Sort of War is called *Offenſive.*

III. *Amicable Compoſition.*

NOT that upon a Prince's taking himſelf to be injur'd, he is preſently to have Recourſe to Arms, eſpecially if any Thing about the Right or Fact in Controverſie remains yet under Diſpute. † But firſt let him try to compoſe the Matter in *an amicable Way*, by Treaties, by Appeal to Arbitrators, or by ſubmitting the Matter in Queſtion to the Deciſion of a Lot; ‖ and theſe Methods are the rather to be choſen by that Party who *claims* from another, becauſe *Poſſeſſion*, with any Shew of Right, is wont to meet with the moſt favourable Conſtructions.

IV. *Unjuſt Cauſes of War.* L. N. N. l. 8. c. 6. § 5.

THE *unjuſt Cauſes of War*, are either thoſe which *openly to all the World are ſuch*; as, Ambition and Covetouſneſs, and what may be reduced thereto: Or ** thoſe that admit of a faint and imperfect *Colour* to be pretended in their Excuſe. Of this Kind there is Variety: As, The Fear of a Neighbour's growing Wealth and Power; Conveniency of a Poſſeſſion, to which yet no Right can be made out; Deſire of a better Habitation; The Denial of common Favours; The Folly of the Poſſeſſor; The Deſire of extinguiſhing another's Title,

* *Grotius de Jure Belli & Pacis*, l. 2. c. 1, &c. to l. 2. c. 23.

† *Grotius de Jure Belli & Pacis*, lib. 2. cap. 23, 24.

‖ *Grotius de Jure Belli & Pacis*, lib. 2. c. 23. § 12.

** *Grotius*, l. 2. c. 24. § 4.

lawfully

lawfully acquired, becauſe it may be prejudicial to us; * and many more.

V. *Of Deceit in War.* L. N. N l. 8. c. 6 § 6.

And tho' the moſt proper Way of Acting in War, is by that of Force and Terrour, yet it is altogether as lawful to attack an Enemy by *Stratagems and Wiles*, provided that the Faith and Truſt which you give him is inviolably obſerved. † It is lawful to deceive him by Stories and feigned Narrations, not by Promiſes and Covenants.

VI. *Violence.* L. N. N l. 8. c. 6 § 7.

But concerning the *Violence* which may be uſed againſt him, and what belongs to him; we muſt diſtinguiſh betwixt what it is poſſible for him to *ſuffer without Injuſtice*, and what we may eaſily *inflict without the Breach of Humanity*. Whoever declares himſelf my Enemy, as he makes Profeſſion by that very Act of enterprizing upon me the greateſt Miſchiefs in the World; ſo at the ſame Time he fully indulges me the Leave to imploy the utmoſt of my Power, without Mercy, againſt himſelf. ‖ Yet Humanity commands me, as far as the Fury of War will permit, that I do my Enemy no more Harm, than the Defence or Vindication of my Right requires, with Care to my Security for the Time to come.

VII. *Solemn and leſs ſolemn War.* L. N. N. l. 8. c. 6. § 9.

We commonly divide War into *Solemn* and *leſs Solemn*. To a *Solemn* War it is required, That it be made on both Sides by the Authority of the Sovereign Governours; and preceeded by a publick Declaration. The *other* either is not publickly denounced, or, perhaps, is begun

* *Grotius*, l. 2. c. 1. § 17. Cap. 22. § 5.
† *Grotius de Jure Belli & Pacis*, l. 3. c. 1. § 6, &c.
‖ *Grotius*, l. 3. c. 4. § 2. Cap. 11, 12, &c.

amongſt private Perſons. * To which latter Head belong alſo *Civil Wars.*

VIII. *Power of making War.* L. N. N. l. 8. c. 6. § 10.

As the *Power of making War*, in all Nations lies in the ſame Hands, that are intruſted with the Government; † ſo it is a Matter above the Authority of a *ſubordinate Magiſtrate* to ingage in, without a Delegation from thence, tho' he could ſuppoſe with Reaſon, that were they conſulted upon the Matter, they would be pleaſed with it.

INDEED all Military Governours of fortified Places and Provinces, having Forces under them to command upon the Defence thereof, may underſtand it to be injoyn'd them by the very Deſign of their Imployments, to repel an Invader, from the Parts committed to their Truſt, by all the Ways they can. But they are not raſhly to carry the War into an Enemy's Country.

IX. *Wars occaſioned by protecting of Refugees.* L. N. N. l. 8. c. 6. § 12.

IN a State of Natural Liberty, a Perſon is aſſaulted by Force only for the Injuries that are done by himſelf. But in a Community, a War often happens upon the *Governour* or *the whole Body*, when *neither of them* has committed any Thing. To make this appear juſt, it is neceſſary, the Act of a Third Party muſt by ſome way or other paſs upon them. Now Governours do partake of the Offences, not only of their proper Subjects, but of others that occaſionally flee to them; if either the Offences are done by their *Permiſſion*, or that they *receive and protect* the Offender. The Sufferance of an Offence becomes then blameable, when at the

* *Grotius de Jure Belli & Pacis*, l. 1. c. 3. § 4.
† *Grotius*, &c. l. 1. c. 3. § 1.

ſame

ſame Time that one knows of the doing it, he has a Power to hinder it. Things openly and frequently done by the Subjects, are ſuppoſed to be known to their Governours; in whom it is always preſumed there is a Power alſo to prohibit, unleſs a manifeſt Proof appears of its Defect. Yet to make it an Occaſion of War, to give Admittance and Protection to a Criminal, who flies to us for the Sake only of eſcaping his Puniſhment, is what muſt proceed rather by Virtue of a particular Agreement betwixt Allies and Neighbours, than from any *common Obligation*; unleſs the Fugitive, being in our Dominions, contrives Hoſtilities againſt the Common-wealth he deſerts.

X. *Repriſals.* L. N. N. l. 8. c. 6. § 13.

ANOTHER received Cuſtom betwixt Nations, is, That the Goods and Eſtate of every Subject may be anſwerable to make good the Debts of that State of which they are originally Members; as alſo for all that Wrong which that State may offer to Foreigners, or that Juſtice it may refuſe to ſhew them, inſomuch, that the Foreign Nation, whoſe Subjects have been thus injur'd by this State, may retaliate the Wrong upon the Effects or Perſons of ſuch Subjects of this State, as may be found among them. And theſe Sorts of Executions are uſually called *Repriſals*, * and commonly prove the Forerunners of War. Thoſe States who are the Aggreſſors, and give juſt Cauſe for ſuch Repriſals, ought to refund and make Reparation to their Subjects upon whom they have thus brought Loſs and Damage, by making them liable to have ſuch Repriſals made upon them.

* *Grotius de Jure Belli & Pacis*, l. 3. c. 2. § 4.

XI. *Of Wars in the Defence of others.* L. N. N. l. 8. c. 6. § 14.

A WAR may be made by a Perſon, not only *for himſelf, but for another.* In order to do this with Honeſty, it is requiſite, that He for whom the War is undertaken, ſhall have a juſt Cauſe; and his Friend, a probable Reaſon, why he will become an Enemy to *that other* for his ſake. Amongſt thoſe, in whoſe Behalf it is not only lawful, but our Duty to make War, there is, in the firſt Place, *our Natural Subjects*, as well ſeverally, as the univerſal Body of them; provided, that the War will not evidently involve the State in greater Miſchiefs ſtill. Next, there are the *Allies*, with whom we have engaged to aſſociate our Arms by Treaty: Yet, therein not only giving the Precedence to our own Subjects, if they ſhould chance to ſtand in need of Aſſiſtance at the ſame Juncture; but preſuppoſing alſo, that the Allies have a juſt Cauſe, and begin the War with Prudence. * After our Allies, our *Friends* deſerve to be aſſiſted by us, even without our Obligation to do it by a ſpecial Promiſe. And where there is no other Reaſon, the common Relation alone of Men to Men, may be ſufficient, when the Party imploring our Aid is unjuſtly oppreſſed, to engage our Endeavours, as far as with Convenience we are able, to promote his Defence.

XII. *The Liberty of killing, &c. in War.* L. N. N. l. 8. c. 6. § 18.

THE *Liberty that is in War*, of killing, plundering, and laying all Things waſte, extends it ſelf to ſo very large a Compaſs, that tho' a Man carries his Rage beyond the *uttermoſt Bounds of Humanity*, yet in the Opinion of Nations, he is not to be accounted infamous, or one that ought to be avoided by Perſons of

* *Grotius de Jure Belli & Pacis*, l. 2. c. 25.

Worth.

Worth. * Excepting, that amongſt the more Civilized World, they look upon ſome particular Methods, of doing Hurt to Enemies, to *be baſe*; as poiſoning Fountains, or corrupting of Soldiers or Subjects to kill their Maſters, *&c.*

XIII. *Of things taken in War.* L. N. N. l. 8. c. 6. § 20.

MOVEABLE *Things* are underſtood to be *Taken* in War then, when they are carried out of the Reach of the Enemy who before poſſeſſed them. † And *Things immoveable*, when we have them within our Cuſtody ſo, that we can beat the Enemy away from thence. Yet the Right of the former Poſſeſſor to retake the ſame, is never utterly extinguiſhed, till he renounces all his Pretenſions to them by a ſubſequent Agreement. For without this, it will be always lawful, by Force, to retrieve again what by Force is loſt. The Soldiers fight by the Authority of the Publick; and whatever they obtain from the Enemy, they get it not for themſelves, but properly for the Community they ſerve. Only it is cuſtomary in moſt Places, to leave to them by Connivance the Moveables, eſpecially thoſe of ſmall Value, that they take, in the Place of a Reward, or perhaps inſtead of their Pay, and for an Incouragement to them to be free of their Blood. When *Things immoveable* that have been loſt to, are retaken *from* the Enemy, they return into the Poſſeſſion of the former Owners: || And Moveables ought to do the ſame; but that amongſt

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* *Grotius de Jure Belli & Pacis*, l. 3. c. 1, *&c.* c. 4. § 15, *&c.*

† *Grotius*, l. 3. c. 6.

|| *Grotius de Jure Belli & Pacis*, l. 3. c. 9. § 13.

moſt People they are delivered over and foregone as a Prey to the Army.

XIV. *Conqueſt.* L. N. N. l. 8. c. 6. § 24.

EMPIRE alſo or Government comes to be acquired by War, not only over the *particular or ſingle Perſons conquered*, but *intire States*. * To render this lawful, and binding upon the Conſciences of the Subjects, it is neceſſary, That on the one Side the Subjects ſwear Fidelity to the Conqueror; and on the other, that the Conqueror caſt off the State and Diſpoſition of an Enemy towards *them*.

XV. *Truce* L. N. N. l. 8. c. 7. § 3.

THE Proceedings of War are ſuſpended by *a Truce*; which is an Agreement (the State and Occaſion of the War remaining ſtill the ſame as before,) to abſtain on both Sides from all Acts of Hoſtility for ſome Time appointed. When that is paſt, if there be no Peace concluded in the *Interim*, they reſume their Hoſtilities again, without the Formality of a new Declaration.

XVI. *Treaties of Truce.*

NOW *Truces* are either *ſuch* as they conſent to during the Continuance of the Expedition, whilſt both Sides keep their Forces on foot; or *thoſe*, on which they quite diſband their Forces, and lay aſide all Military Preparations. The firſt are ſeldom taken but for a ſmall Time. The others they *may* and uſually *do* take for a Continuance ſo long, as to carry the Face of a Peace; and ſometimes alſo the very Name, with the Addition of ſome Term of Years, only to diſtinguiſh it from a *perfect Peace* indeed, which regularly is Eternal, and extinguiſhes the Cauſes of the War for ever. † Thoſe that they call *tacit Truces*, oblige to nothing. For as on

* *Grotius de Jure Belli & Pacis*, l. 3. c. 7. & c. 15.
† *Grotius de Jure Belli & Pacis*, l. 3. c. 21. § 1. &c.

both

both Sides they lie quiet for their Pleaſure, ſo, whenever they think fit, they may break out into Acts of Hoſtility.

XVII. *Treaties of Peace.* L. N. N. l. 8. c. 8.

BUT when a Peace is mutually ratified by each Sovereign Governour, upon Articles and Conditions agreed betwixt themſelves, which they ingage to obſerve and put in Execution faithfully by a Time preſcribed; then a War is perfectly ended. * In Confirmation whereof, it is uſual, not only for both Parties to take their Oaths and interchange Hoſtages; but for ſome others oftentimes, eſpecially amongſt the Aſſiſtants at the Treaty, to undertake the *Guaranty* of the ſame, with Promiſes of Aid to him who ever is firſt injured by the other, in Contravention to the Articles of the Peace that is made.

* *Grotius*, l. 3. c. 20. § 2, &c.

CHAP. XVII.

Of ALLIANCES.

I. *Alliances twofold.* L. N. N. l. 8. c. 9. § 1.

ALLIANCES interchangeably paſſed betwixt Sovereign Governours, are of good Uſe both in Times of War and Peace. * They may be *divided*, in Reſpect of their Subject, either into ſuch as *reinforce the Duty* already incumbent on us from the *Law of Nature*; or ſuch

* *Grotius de Jure Belli & Pacis*, l. 2. c. 15.

as

as *ſuperadd ſomething* to the Precepts of the Law; at leaſt, they determine their Obligation to ſuch or ſuch particular Actions, which before ſeemed indefinite.

II. *Treaties of Peace.* L. N. N. l. 8. c. 9. § 2.

By the *firſt* Sort are meant *Treaties of Peace*, wherein nothing more is agreed upon than the ſimple Exerciſe of Humanity towards one another, or a Forbearance of Miſchief and Violence. Or, perhaps, they may eſtabliſh a general Sort of Friendſhip betwixt them, not mentioning Particulars; or fix the Rules of Hoſpitality and Commerce, according to the Directions of the *Law of Nature*.

III. *Equal Leagues.* L. N. N. l. 8. c. 9. § 3.

The others of the latter Sort, are called *Leagues*, and are either *Equal* or *Unequal*. *Equal Leagues* are ſo far compoſed of the ſame Conditions on both Sides, that they not only promiſe what is *Equal* abſolutely, or at leaſt in Proportion to the Abilities of the Perſon; but they ſtipulate in ſuch a Manner too, that neither Party is to the other obnoxious, or in a worſe Condition.

IV. *Unequal.* L. N. N. l. 8. c. 9. § 4.

Unequal *Leagues* are thoſe, wherein Conditions are agreed upon that are unequal, and render one Side worſe than the other. * This Inequality may be either on the Part of the *Superiour*, or elſe of the *Inferiour Confederate*. For if the Superiour Confederate ingages to ſend the other Succours, unconditionally, not accepting of any Terms from him, or ingages to ſend a greater Proportion of them than He, the Inequality lies upon the *Superiour*. But if the League requires of the inferiour Confederate the Performance of more Things towards the Superiour,

* *Grotius de Jure Belli & Pacis*, l. 1. c. 3. § 21.

than

than the Superiour performs towards him, the Inequality there no leſs evidently lies on the Side of the *Inferiour*.

V. *Conditions put upon Inferiours.* L. N. N. l. 8. c. 9. § 5.

AMONGST the Conditions required of an inferiour Ally, ſome contain a *Diminution of his Sovereign Power*, reſtraining him from the Exerciſe thereof in certain Caſes without the Superiour's Conſent. Others *impoſe no ſuch Prejudice upon his Sovereignty*, but oblige him to the Performance of thoſe we call *tranſitory* Duties, which once done, are ended altogether. As, to diſcharge the Pay of the other's Army; to reſtore the Expences of the War; to give a certain Sum of Money; to demoliſh his Fortifications, deliver Hoſtages, ſurrender his Ships, Arms, *&c.* And yet neither do ſome *perpetual* Duties *diminiſh the Sovereignty* of a Prince. As, to have the ſame Friends and Enemies with another, tho' the other be not reciprocally ingaged to have the ſame with him: To be obliged to erect no Fortifications here, nor to ſail there, *&c.* To be bound to pay ſome certain friendly Reverence to the other's Majeſty, and to conform with Modeſty to his Pleaſure.

VI. *The Subject of Leagues.*

BOTH theſe Sorts of Leagues, as well *Equal* as the *Unequal*, are wont to be contracted upon various Reaſons, whereof ſuch eſpecially produce Effects of the ſtrongeſt and moſt binding Complexion, as tend to the Conjunction of many Nations in a League that is to laſt for ever. But the *Common Subject* of the Leagues moſt in Uſe, is, either the Preſervation of Commerce, or the Furniſhing of Succours in a War, Offenſive or Defenſive.

VII. *Real and perſonal Leagues.*

THERE is another famous Diviſion of Leagues into *Real*, and *Perſonal*. The *Latter* expreſs

L. N. N. l. 8. c. 9. § 6. expreſs ſuch a near Regard to the Perſon of the Prince they are contracted with, that whenever he dies, they expire alſo. *Real Leagues* are thoſe, which not being entred into in Conſideration ſo much of any particular Prince or Governour, as of the Kingdom or Common-wealth, continue in full Force, even after the Death of the firſt Contracters of them.

VIII. *Sponſions.* L. N. N. l. 8. c. 9. § 12. THE next in Nature to *Leagues*, are the Agreements of a *Publick Miniſter*, made upon the Subject of the Affairs of the Prince his Maſter, without Orders for the ſame; which are uſually called *Overtures*. The Conditions whereof impoſe no Obligation upon the Prince, till he ſhall pleaſe afterwards to ratifie them by his own Authority. And therefore, if, after the *Miniſter* has agreed upon the Compact abſolutely, he cannot obtain his Prince's Confirmation of it; it lies upon himſelf to conſider, what Satisfaction he ought to render to thoſe, who, depending upon his Credit, have been deceived by him with inſignificant Ingagements.

CHAP. XVIII.

The DUTY *of Subjects.*

I. *Twofold.* L. N. N. l. 7. c. 8. § 10. THE Duty of Subjects is either *General*, ariſing from the Common Obligation which they owe to the Government as *Subjects*: Or *Special*, upon the Account of ſome particular *Office* and *Imployment*, that the Government impoſes upon them.

THEIR

THEIR *General* Duty reſpects the Demeanour of themſeves ſeverally, towards their Governours, the Common-wealth, and one another in particular. II. *General.*

TO their *Governours* they owe Honour, Fidelity, and Obedience. Beſide that, they ought to entertain good and honourable *Thoughts* of them and their Actions, and *ſpeak* accordingly; to acquieſce with Patience and Content under the preſent State of Things, not ſuffering their Deſires to wander after Innovations; not adhering to any Perſons, or admiring and honouring them, *more* than they do the Magiſtrates that are ſet over them. III. *Towards their Governours.*

IN Reference to the Common-wealth, their Duty is, to prefer the Happineſs and Safety of it to the deareſt Things they have in the World: To offer their Lives, Eſtates and Fortunes with Chearfulneſs towards its Preſervation, and to ſtudy to promote its Glory and Welfare by all the Powers of their Induſtry and Wit. IV. *The Common-wealth;*

TOWARDS *one another*, their Behaviour ought to be friendly and peaceable, as ſerviceable, and as affable as they can make it; not to give Occaſion of Trouble by Moroſeneſs and Obſtinacy, nor envying the Happineſs of any, or interrupting their lawful and honeſt Injoyments. V. *One another.*

AND as for their *peculiar Duties*, as *Officers*, whether they influence the whole Body of the Nation, or are employed only about a certain Part of it, there is this one general Precept to be obſerved for all; *That* no Perſon affect or take upon him any Imployment, of which he knows himſelf, by the Senſe of his Diſabilities (whether VI. *Their ſpecial Duties.*

Want

Want of Strength, Skill, Courage, &c.) to be unworthy and uncapable.

VII. *The Duty of Privy-Counſellors.*

PARTICULARLY, let thoſe who *aſſiſt at the Publick Counſels*, turn their Eyes round upon all Parts of the Common-wealth; and whatever Things they diſcover to be of Uſe, thereupon ingenuouſly and faithfully, without Partiality or corrupt Intentions, lay open their Obſervations. Let them not take their own Wealth and Grandure, but always the publick Good, for the End of their Counſels; nor flatter their Princes in their Humours to pleaſe them only. Let them abſtain from Factions and unlawful Meetings or Aſſociations.; diſſemble not any thing that they ought to ſpeak, nor betray what they ought to conceal. Let them approve themſelves impenetrable to the Corruptions of Foreigners; and not poſtpone the publick Buſineſs to their private Concerns and Pleaſures.

VIII. *The Clergy.*

LET the *Clergy*, who are appointed publickly to adminiſter in *the Sacred Offices of Religion*, perform their Work with Gravity and Attention; teaching the Worſhip of God, in Doctrines that are moſt true, and ſhewing themſelves eminent Examples of what they preach to others; that the Dignity of their Function, and the Weight of their Doctrine, may ſuffer no Diminution by the Scandal of their ill led Lives.

IX. *Publick Readers.*

LET ſuch who are publickly imployed to *inſtruct the Minds of the People in the Knowledge of Arts and Sciences*, teach nothing that is falſe and pernicious; delivering their Truths ſo, that the Auditors may aſſent to them, not out of a Cuſtom of hearing, but for the ſolid Reaſons that attend them: And avoiding all Queſtions which incline to imbroil Civil Society; let them aſſure themſelves,

themſelves, that whatever human Science or Knowledge returns no Good to us, either as Men or Subjects, the ſame deſerves their Cenſure as *impertinent* Vanity.

X. *Lawyers.*

Let thoſe Magiſtrates, whoſe Office it is to *diſtribute Juſtice*, be eaſie of Acceſs to all, and ready to protect the Common People againſt the Oppreſſions of the more mighty; adminiſtring Juſtice both to Rich and Poor, Inferiour and Superiour, with a perfect Equality. Let them not multiply Diſputes unneceſſarily; abſtain from Corruption; be diligent in trying of Cauſes, and careful to lay aſide all Affections that may obſtruct *Sincerity* in Judgment; not fearing the Perſon of any Man while they are doing their Duty.

XI. *Officers of the Army.*

Let the *Officers of War* diligently Exerciſe their Men on all Occaſions, and harden them for the enduring the Fatigues of a Military Life, and inviolably preſerve good Diſcipline among them. Let them not raſhly expoſe them to the Danger of the Enemy, nor defraud them of any of their Pay or Proviſions; but procure it for them with all the Readineſs they are able, and keep them in the Love of their Country, without ever ſeducing them to ſerve againſt it.

XII. *Soldiers.*

On the other Hand, let the *Soldiers* be content with their Pay, without plundering, or harraſſing the Inhabitants. Let them perform their Duty couragiouſly and generouſly, in the Defence of their Country; neither running upon Danger with Raſhneſs, nor avoiding it with Fear: Let 'em exerciſe their Courage upon the Enemy, not their Comrades: And maintain their ſeveral Poſts like Men, preferring an Honourable

nourable Death before a Diſhonourable Flight and Life.

XIII. *Ambaſſadors and Envoys.* LET the *Miniſters of the Common-wealth in foreign Parts*, be cautious and circumſpect; quick to diſcern Solidities from Vanity, and Truths from Fables; in the higheſt Degree, Tenacious of Secrets, and obſtinately averſe to all Corruptions, out of their Care of the Good of the Common-wealth.

XIV. *Officers of the publick Revenues.* LET the *Officers for Collecting and Diſpoſing of the Publick Revenue* have a Care of uſing needleſs Severities, and of increaſing the Subjects Burthen for their own Gain, or through their troubleſome and petulant Humours. Let them miſapply nothing of the publick Stock; and ſatisfie the Perſons who have Money to be paid out of it, without Delays unneceſſary.

XV. *The Continuance of the Duties aforeſaid.* ALL theſe *Particular* Duties of Subjects, *continue* during the Time of Employment: And when that ceaſes, the other expire alſo. But their *General Duties are in Force*, ſo long as ever Men continue to be Subjects; that is, 'till by either the *expreſs* or *tacit* Conſent of the Nation, they depart thence, to fix the Seat of their Fortunes elſewhere; that they are baniſhed and deprived of the Rights of Subjects for their Crimes; or, being overcome in Battle, they are forced to yield to the Diſpoſal of the Conqueror.

L. N. N. l. 8. c. 11.

The E N D.

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FINIS.

Thursday Feb.y 28.1771